

Chapter 4

APPLICATIONS, WAITING LIST AND TENANT SELECTION

INTRODUCTION

When a family wishes to receive Section 8 HCV assistance, the family must submit an application that provides OHA with the information needed to determine the family's eligibility. When HCV assistance becomes available, OHA must select families from the waiting list in accordance with HUD requirements and OHA policies as stated in its Administrative Plan.

OHA is required to adopt a clear approach to accepting applications, placing families on the waiting list, and selecting families from the waiting list, and must follow this approach consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or OHA to receive preferential treatment. Funding earmarked exclusively for families with particular characteristics may also alter the order in which families are served.

HUD regulations require that OHA comply with all equal opportunity requirements and it must affirmatively further fair housing goals in the administration of the program [24 CFR 982.53, HCV GB p. 4-1]. Adherence to the selection policies described in this chapter ensures that the OHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and OHA policies for taking applications, managing the waiting list and selecting families for HCV assistance.

The policies outlined in this chapter are organized into three sections, as follows:

Part I: The Application Process. This part provides an overview of the application process, and discusses how applicants can obtain and submit applications. It also specifies how OHA will handle the applications it receives.

Part II: Managing the Waiting List. This part presents the policies that govern how OHA's waiting list is structured, when it is opened and closed, and how the public is notified of the opportunity to apply for public housing. It also discusses the process the OHA will use to keep the waiting list current.

Part III: Selection for HCV Assistance. This part describes the policies that guide the PHA in selecting families for HCV assistance as such assistance becomes available. It also specifies how in-person interviews will be used to ensure that the PHA has the information needed to make a final eligibility determination.

PART I: THE APPLICATION PROCESS

4.I.A. OVERVIEW

This part describes the policies that guide OHA's efforts to distribute and accept applications, and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list. This part also describes OHA's obligation to ensure the accessibility of the application process.

4.I.B. APPLYING FOR ASSISTANCE [HCV GB, pp. 4-11 – 4-16, Notice PIH 2009-36]

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits OHA to determine the format and content of its applications, as well how such applications will be made available to interested families and how applications will be accepted by OHA. OHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the PHA's application.

OHA Policy

A two-step process will be used to take applications. Under the two-step application process, OHA initially will require families to provide only the information needed to make an initial assessment of the family's eligibility, and to determine the family's placement on the waiting list. The family will be required to provide all of the information necessary to establish family eligibility and the level of assistance when the family is selected from the waiting list.

4.I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

OHA must take a variety of steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard OHA application process.

Elderly and Disabled Populations [24 CFR 8 and HCV GB, pp. 4-11 – 4-13]

OHA must provide reasonable accommodation to the needs of individuals with disabilities. The application-taking facility and the application process must be fully accessible, or OHA must provide an alternate approach that provides equal access to the application process. Chapter 2 provides a full discussion of OHA's policies related to providing reasonable accommodations for people with disabilities.

Limited English Proficiency

PHAs are required to take reasonable steps to ensure meaningful access to their programs and activities by persons with limited English proficiency [24 CFR 1]. Chapter 2 provides a full discussion of OHA's policies related to ensuring access to people with limited English proficiency (LEP).

4.I.D. PLACEMENT ON THE WAITING LIST

OHA must review each completed application received and make a preliminary assessment of the family's eligibility. OHA must accept pre-applications from families for whom the list is open unless the PHA determines the family to be ineligible for the grounds stated in the regulations [24 CFR 982.206(b)(2)]. Where the family is determined to be ineligible, OHA must notify the family in writing [24 CFR 982.201(f)]. Where the family is eligible, the family will be placed on a waiting list of applicants.

No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list. [24 CFR 982.202(c)]

Method OHA will use for Placing Apparently Eligible Families on the Waiting List

OHA will use a lottery system to select and place families on the waiting list. Applications will be accepted for a designated period of time as specified in the announcement notice. OHA will take applications that are submitted and randomly assign a lottery number to each application. The number of families selected will vary according to the number of voucher/units available. OHA may also open the wait list on a continuous basis. In that case, applications received will be accepted continuously and then date and time stamped. These applications may also have a lottery number randomly assigned. Families not selected by the lottery for placement on the waiting list, will be notified within 120 calendar days of receiving a completed application.

Ineligible for Placement on the Waiting List

If OHA can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list. Where a family is determined to be ineligible, OHA will send written notification of the ineligibility determination within 120 calendar days of receiving a completed application. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review and explain the process for doing so (see Chapter 16).

Eligible for Placement on the Waiting List

OHA will send written notification to the families selected for placement on the waiting list in within 120 calendar days of receiving a completed application. Placement on the waiting list does not indicate that the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list. If selected applications are randomly assigned a lottery number, applicants will be placed on the waiting list in order of their assigned lottery number and according to OHA preference(s), if any. If no lottery number is assigned, the applicant will be placed on the waitlist in order of date/time received.

PART II: MANAGING THE WAITING LIST

4-II.A. OVERVIEW

OHA must have policies regarding the type of waiting list it will utilize as well as the various aspects of organizing and managing the waiting list of applicant families. This includes opening the list to new applicants, closing the list to new applicants, notifying the public of waiting list openings and closings, updating waiting list information, purging the list of families that are no longer interested in or eligible for public housing, and conducting outreach to ensure a sufficient number of applicants.

In addition, HUD imposes requirements on how a PHA may structure its waiting list and how families must be treated if they apply for assistance at a PHA that administers more than one assisted housing program.

Under MTW authority, OHA is authorized to determine waiting list procedures, tenant selection procedures and criteria and preferences, including authorizing vouchers for relocation of witnesses and victims of crime that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. This authorization waives certain provisions of Sections 8(o)(6), 8(o)(13)(J) and 8(o)(16) of the 1937 Act and 24 CFR 982 Subpart E, 982.305 and 983 Subpart F as necessary to implement the Agency's Annual MTW Plan.

4-II.B. ORGANIZATION OF THE WAITING LIST

OHA's HCV waiting list must be organized in such a manner to allow OHA to accurately identify and select families in the proper order, according to the admissions policies described in this Plan.

The waiting list will contain the following information for each applicant listed:

- Name and social security number of head of household
- Family Unit size and number of family members
- Amount and source of annual income
- Accessibility requirement, if any
- Date and time or waiting list opening date and lottery number
- Household type (family, elderly, disabled)
- Race and ethnicity of the head of household.
- Qualification for any local preference,

HUD requires that PHAs maintain a single waiting list for the HCV program unless it serves more than one county or municipality. Such PHAs are permitted, but not required, to maintain a separate waiting list for each county or municipality served.

OHA Policy

OHA will maintain a single waiting list for the MTW HCV program.

Under MTW Authority, OHA will also authorize owner administered site-based waiting lists for tenanting units at individual buildings, projects, project groups that receive Project-Based Voucher (PBV) program assistance. The site-based waiting list may be created solely from outreach efforts conducted by the authorized site property owner/manager. The property owner/manager may, but is not required to, directly notify families on the OHA tenant-based HCV waiting list of the opening of a project-based voucher site-based waiting list (See Section **17-VI.C.**). The Executive Director or designee may elect to offer applicants from the HCV program waitlist available units in other program sites (such as PBV or public housing) when other program site-based waitlists have been exhausted resulting in long-term vacancies.

All OHA programs may offer assistance to other program applicants when the waitlist for a specific program is exhausted.

A family's decision to apply for, receive, or refuse other housing assistance must not affect the family's placement on the HCV waiting list, or any preferences for which the family may qualify. HUD permits, but does not require, that PHAs maintain a single merged waiting list for their public housing, Section 8, and other subsidized housing programs.

4-II.C. OPENING AND CLOSING THE WAITING LIST [24 CFR 982.206]

Closing the Waiting List

OHA is permitted to close the waiting list, in whole or in part, if it has an adequate pool of families to use its available HCV assistance.

OHA will close the waiting list when the estimated waiting period for housing applicants on the list reaches 24 months for the most current applicants. Where OHA has particular preferences or other criteria that require a specific category of family, OHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

OHA Policy

Under MTW Authority, the OHA waiting list will always remain open for families that qualify for:

- Special Admissions under Section 4.III.B.
- A DVP/DHAP assistance preference (Limited to 50 new admissions per calendar year),
- A Family Unification Program conversion preference (Limited to 15 new admissions per calendar year unless additional funding is received from HUD),

- A Section 8 Homeownership preference (Limited to 15 new admissions per calendar year),
- A Shelter-Plus Care conversion preference (Limited to 20 new admissions per calendar year),
- A Local Housing Assistance Program (LHAP) conversion preference (number of conversions subject to funding availability).

OHA may continue to accept MTW HCV applications from these applicants while closing the waiting list to others.

Reopening the Waiting List

If the waiting list has been closed, it may be reopened at any time. OHA will publish a notice in local newspapers of general circulation, media that target Limited English Populations (LEP), and other suitable media outlets that the OHA is reopening the waiting list. Such notice must comply with HUD fair housing requirements. OHA will specify who may apply, and where and when applications will be received.

OHA will announce the reopening of the waiting list at least 10 business days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice. The notice will specify where, when, and how applications are to be received.

OHA will give public notice by publishing the relevant information in suitable media outlets including, but not limited to community based organizations, newspapers, and on the Authority's website at www.oakha.org .

OHA is committed to offering housing assistance to all eligible individuals and families. Community outreach, during the open application period, is a means of ensuring unrestricted participation.

In order for eligible families to be aware of the availability of the various HCV and Section 8 programs , OHA will publish advertisements in newspapers of general circulation, ethnic and gender focused publications, and other appropriate resources.

OHA will distribute fact sheets to the broadcasting media and initiate personal contacts with news media.

The status of housing availability will be shared with other community service providers to inform them of eligibility requirements and guidelines so that proper referrals to OHA will be made.

Marketing and informational materials will be subject to the following:

- (a) compliance with Fair Housing Act requirements on wording, logo, size of type, etc. (24 CFR 109.30(a));
- (b) providing an accurate description of the housing units, application process, waiting list and preference structure;

- (c) using clear and easy to understand terms and will use more than strictly English-language print media;
- (d) making clear who is eligible: low income individuals and families; working and non-working people; and people with both physical and mental disabilities; and
- (e) specifying that reasonable accommodations will be made for persons with disabilities.

4-II.D. FAMILY OUTREACH [HCV GB, pp. 4-2 to 4-4]

OHA conducts outreach as necessary to ensure that it has a sufficient number of applicants on the waiting list.

Because HUD requires OHA to serve a specified percentage of extremely low-income families (see Chapter 4, Part III), OHA may need to conduct special outreach to ensure that an adequate number of such families apply for assistance [HCV GB, p. 4-20 to 4-21].

OHA outreach efforts must comply with fair housing requirements. This includes:

- Analyzing the housing market area and the populations currently being served to identify underserved populations
- Ensuring that outreach efforts are targeted to media outlets that reach eligible populations that are underrepresented in the program
- Avoiding outreach efforts that prefer or exclude people who are members of a protected class

OHA outreach efforts are designed to inform qualified families about the availability of units under the program. These efforts may include, as needed, any of the following activities:

- Submitting press releases to local newspapers, including minority newspapers
- Developing informational materials and flyers to distribute to other agencies
- Providing application forms to other public and private agencies that serve the low income population
- Developing partnerships with other organizations that serve similar populations, including agencies that provide services for persons with disabilities or families who are least likely to apply.

OHA will monitor the characteristics of the population being served and the characteristics of the population as a whole in OHA's jurisdiction. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are being underserved.

4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

While the family is on the waiting list, the family must inform OHA of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing.

4-II.F. UPDATING THE WAITING LIST [24 CFR 982.204]

HUD requires OHA to establish policies to use when removing applicant names from the waiting list.

Purging the Waiting List

The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to OHA's request for information or updates because of a family member's disability, OHA must, upon the family's request, reinstate the applicant family to their former position on the waiting list as a reasonable accommodation [24 CFR 982.204(c)(2)]. See Chapter 2 for further information regarding reasonable accommodations. To update the waiting list, OHA will send an update request via first class mail, or e-mail to each family on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program. This update request will be sent to the last address that OHA has on record for the family. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

The family's response must be in writing and may be delivered in person, by mail, or by fax. Responses should be postmarked or received by OHA not later than 30 business days from the date of the OHA letter.

If the family fails to respond within 30 business days, the family will be removed from the waiting list without further notice.

If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 15 business days to respond from the date the letter was re-sent. If the family fails to respond within this time frame, the family will be removed from the waiting list and will be sent a Denial Letter.

If a family is removed from the waiting list for failure to respond, the Executive Director, or his designee may reinstate the family if s/he determines the lack of response was due to OHA error, undeliverable mail, no response or to circumstances beyond the family's control.

OHA Policy

The waiting list will be purged whenever the “fallout rate” exceeds 35%, to ensure that applicant information is current, timely and that a reasonably efficient waiting list is available at all times.

Removal from the Waiting List

OHA will remove applicants from the waiting list if they have requested that their name be removed in writing, in person or by e-mail. In such cases no informal review is required.

If OHA determines that the family is not eligible for admission (see Chapter 3) at any time while the family is on the waiting list, the family will be removed from the waiting list.

If a family is removed from the waiting list because the OHA has determined the family is not eligible for admission, a notice will be sent to the family’s address of record as well as to any alternate address provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding the OHA’s decision (see Chapter 16). [24 CFR 982.201(f)]

PART III: TENANT SELECTION

4-III.A. OVERVIEW

As vouchers become available, families on the waiting list must be selected for assistance in accordance with the policies described in this part.

The order in which families will receive assistance from the waiting list depends on the selection method chosen by OHA and is impacted in part by any selection preferences that the family qualifies for. The source of HCV funding also may affect the order in which families are selected from the waiting list.

OHA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to OHA's selection policies [24 CFR 982.204(b) and 982.207(e)]. OHA's policies must be posted any place where OHA receives applications.

The program rules discussed within this Plan are primarily those required by HUD. OHA is authorized under the Moving to Work (MTW) Demonstration program to develop and adopt reasonable policies and process to explore and test innovative methods of delivering HCV program assisted housing and supportive services to low-income families in Oakland. MTW policies and procedures may conflict with HUD regulatory requirements. Where no MTW policy or procedure exists, then standard Section 8 rules and regulations apply.

Under MTW authority, OHA is authorized to combine funding awarded annually pursuant to Section 8(o), 9(d) and 9(e) of the 1937 Act into a single authority wide funding source (“MTW Funds”). This authorization waives certain provisions of Section 8 and 9 of the 1937 Act and 24 CFR 982, and 990 as necessary to implement the Agency’s Annual MTW Plan. Under MTW authority with approval from the Executive Director on a case by case basis, OHA may allow inter-program moves and transfers between the public housing, Housing Choice Voucher, or Project-based Voucher programs, if there are PBV units or HCV available and the resident is eligible for the relevant program. This policy is authorized under Attachment C, Section D.4. of the Amended and Restated Moving to Work Agreement.

4-III.B. SELECTION AND HCV FUNDING SOURCES

Special Admissions [24 CFR 982.203]

HUD may award funding for specifically-named families living in specified types of units (e.g., a family that is displaced by demolition of public housing; a non-purchasing family residing in a HOPE 1 or 2 projects). In these cases, OHA may admit families that are not on the waiting list, or without considering the family's position on the waiting list. OHA must maintain records showing that such families were admitted with special program funding.

OHA Policy (MTW and HUD approval required)

Under MTW Authority and subject to approval by the Board of Commissioners, OHA may accept special admissions families in the following circumstances, and where HUD has not provided special program funding:

- A resident of a conventional housing unit, where under an “emergency transfer provision”, the Authority may utilize a tenant-based Section 8 voucher for the purposes of providing alternative housing, if one is available and the resident is otherwise eligible for the HCV program.
- A family enrolled in the **2010-HUD-Ending Homelessness** study. The eligible applicant must be referred by an authorized study partner who will provide case services and monitor results. Admission to the HCV program for participation in the study group is limited to a maximum of 65 families.
- Involuntary displacement from affordable housing in Oakland due to official government action;
- Involuntary displacement due to project financial difficulties that threaten the eminent loss of affordable housing.
- A participant in an MTW authorized Transitional/Conditional Housing Program unit who has met the criteria to “graduate” may be admitted to a traditional housing program, subject to funding availability and the availability the unit that meets occupancy standards family size.

For the purpose of this section, government is defined as any federal, state, or local governmental entity or any of instrumentality or regulatory body thereof. Action is defined as any action pursuant to 1) approval by the duly-appointed or elected deliberative body and/or signed by the appropriate executive or designee, or 2) the expiration of a limited term agreement between OHA and other government entity. Financial difficulty means that the project is in the process of being declared insolvent by a court of competent jurisdiction and all effected tenants must be relocated to other housing.

In these cases, OHA may admit families that are not on the waiting list, or without considering the family’s position on the waiting list. OHA must maintain records showing that such families were admitted as a Special Admission.

OHA will utilize MTW funds allocated for MTW Housing Choice Voucher program activities in providing housing assistance for these special admission families. Such families are subject to all admissions criteria applicable to the MTW Housing Choice Voucher program participation.

A project designated for Special Admissions under this policy must be specifically requested in writing by the City of Oakland or other government entity responsible for imposing the involuntary displacement action. The request must be accepted by the Director of Leased Housing. The eligible family is the family that is legally residing in the unit on the date specified in the request by City of Oakland or other government

entity responsible for imposing the involuntary displacement action. OHA will also require that the enforcement agency imposing the involuntary displacement action provide OHA with a verifiable list of legal residents that are eligible for special admission.

The eligible family that accepts the MTW Housing Choice Voucher may not utilize the voucher in the unit they currently occupy and must successfully relocate from the distressed site to be admitted to the program.

Targeted Funding [24 CFR 982.204(e)]

HUD may award OHA funding for a specified category of families on the waiting list. OHA must use this funding only to assist the families within the specified category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-III.C.

OHA administers the following types of targeted funding programs:

Mainstream Program Vouchers

Family Unification Program (FUP) Vouchers

Veterans Affairs Supportive Housing Vouchers (VASH)

Non-Elderly Disabled Voucher (NED) (subject to funding availability)

OHA Policy

If there are no families on the waiting list eligible for a Targeted Funding program, OHA may continue to accept applications (including applicant families referred by program service partner agencies), who meets the criteria for an available a targeted program voucher, while closing the waiting list to others (see 4-II.C.).

Regular HCV Funding

MTW HCV funding will be used to assist any eligible family on the HCV waiting list and any site-based waiting list authorized by OHA for a Project-Based Voucher program site.

4-III.C. SELECTION METHOD

PHAs must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the PHA will use [24 CFR 982.202(d)]

Under MTW authority, OHA is authorized to determine waiting list procedures, tenant selection procedures and criteria and preferences, including authorizing vouchers for relocation of witnesses and victims of crime that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. This authorization waives certain provisions of Sections 8(o)(6), 8(o)(13)(J) and 8(o)(16) of the 1937 Act and 24 CFR 982 Subpart E, 982.305 and 983 Subpart F as necessary to implement the Agency's Annual MTW Plan.

Local Preferences [24 CFR 982.207; HCV p. 4-16]

The PHA is permitted to establish local preferences and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits the PHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the PHA's plan, the consolidated plan, and must be based on local housing needs and priorities that can be documented by generally accepted data sources.

OHA Policy

OHA will use the following preferences to select families from the MTW Section 8 tenant-based voucher program waiting list:

- **A Residency preference** (Applicants who live or work in the City of Oakland at the time of the application interview and/or applicants that lived or worked in the City of Oakland at the time of submitting their initial application and can verify their previous residency/employment at the applicant interview, qualify for this preference).
- **A Family preference** (Applicant families with two or more persons, or a single person applicant that is 62 years of age or older, or a single person applicant with a disability, qualify for this preference).
- **A Veteran** and active members of the military preference.
- **A DVP/DHAP** assistance preference (Applicant families currently receiving Disaster Voucher Program (DVP) or Disaster Housing Assistance Program (DHAP) assistance from OHA and where DVP/DHAP program funding has expired, qualify for this preference (New admission for DVP/DHAP conversions is limited to 50 new admission families per calendar year)).
- **A Family Unification Program (FUP) conversion preference.** OHA may expand the Family Unification Program (FUP) by converting certain families who were assisted by a targeted FUP voucher, to the Housing Choice Voucher (HCV) program. The families selected for this conversion must have successfully reunified, maintained housing independent of services and demonstrated stability in their assisted tenancy for a consecutive 3-year period. Emancipated foster youths admitted to the FUP program will also be evaluated at the end of their 36-month term and upon demonstrated stability in their FUP tenancy, may also be offered the opportunity for continued assistance under the Housing Choice Voucher program. The conversion of FUP assisted families to the Housing Choice Voucher program is limited to 15 or an amount to be determined at the discretion of the Executive Director or his designee families per calendar year.

FUP program participants who agree to sign an FSS Contract of Participation (Form HUD-52650) will maintain their housing assistance for a period not exceeding the length of the FSS Contract of Participation, including extensions.

Per All provisions of HUD regulations and PIH notices will be implemented and be in effect until amended, superseded or rescinded.

- **A Shelter-Plus Care conversion preference.** OHA may expand its Shelter-Plus Care program by converting certain families who are assisted by the Shelter-Plus Care program, operated in partnership with the County of Alameda. An OHA administered Shelter-Plus Care family who has maintained housing independent of services and who has demonstrated stability in their assisted tenancy for a consecutive 3-year period may be converted to the Housing Choice Voucher (HCV) program. The conversion of Shelter-Plus Care assisted families to the Housing Choice Voucher program is limited to 20 families per calendar year.
- **A Local Housing Assistance Program (LHAP) conversion preference.** A family assisted by the OHA administered Local Housing Assistance Program (LHAP is authorized under MTW and adopted by the OHA Board of Commissioners, December 7, 2009), may be converted to the Housing Choice Voucher (HCV) program subject to funding availability and applicant eligibility for admission the HCV program.
- **A Section 8 Homeownership Program preference.** Applicant families who meets all Family Eligibility criteria for participation in the Section 8 Homeownership program (Section 15-VII.B.), and who are a participant in good standing in any OHA administered program, qualify for this preference. (New admission to the Section 8 Homeownership program for families who are participants from other OHA programs (see Section 15-VII.C.) is limited 15 new admission families per calendar year). The families will be selected based on the order (date and time) in which their completed application is received by OHA under all available positions are filled.
- **A Homeless preference.** Applicant families who meet the McKinney-Vento Act definition of homelessness qualify for this preference.
- **A Non-Elderly persons with Disabilities transitioning out of institutional and other segregated settings, at serious risk of institutionalization, homeless, or at risk of becoming homeless. (2017 Mainstream Voucher Program –FR-6100-N-43 – Grant award)**

Order of Selection [24 CFR 960.206(e)]

OHA's system of preferences will select families by a random selection process [24 CFR 982.207(c)]. If a PHA does not have enough funding to assist the family at the top of the waiting list, it is not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)].

MTW - Housing Choice Voucher program

OHA Policy

Families will be selected from the waiting list in the order of their assigned lottery number and according to OHA preference(s) for which they qualify. Among applicants

with the same preference, families will be selected according to a random selection process.

Conversions

Families will be selected based on the order (date and time) in which their completed application is received by OHA when approved for conversion to HCV from the following programs:

- Family Unification Program (FUP) conversion
- DVP/DHAP assistance
- Shelter-Plus Care conversion preference
- Local Housing Assistance Program (LHAP) conversion preference

Targeted Programs

When selecting families from the waiting list OHA is required to use the targeted program funding to assist only those families who meet specified criteria.

OHA Policy

For the **Mainstream Program vouchers**, families will be selected based on their assigned lottery number and any selection preference(s) for which they qualify.

For the **Family Unification Program (FUP) vouchers**, families will be selected first based on their assigned lottery number, any selection preference(s) for which they qualify, then in the order (date and time) in which their completed application is received by OHA.

For **Veterans Affairs Supportive Housing (VASH) vouchers**, families will be selected in the order (date and time) in which their completed application is received by OHA.

For **Non Elderly Disabled (NED) vouchers**, families will be selected based on their assigned lottery number and any selection preference(s) for which they qualify, then in the order (date and time) in which their completed application is received by OHA (Issuance of NED vouchers is subject to the award of funding from HUD).

When selecting families from the waiting list OHA is required to assist only those families who meet the specified criteria, and OHA is not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)].

Income Targeting Requirement [24 CFR 982.201(b)(2)]

HUD requires that extremely low-income (ELI) families make up at least 75% of the families admitted to the HCV program during the OHA's fiscal year. ELI families are those with annual incomes at or below the federal poverty level or 30% of the area median income, whichever number is higher. To ensure this requirement is met, OHA may skip non-ELI families on the waiting list in order to select an ELI family.

Low income families admitted to the program that are "continuously assisted" under the 1937 Housing Act [24 CFR 982.4(b)], as well as low-income or moderate-income families admitted to the program that are displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, are not counted for income targeting purposes [24 CFR 982.201(b)(2)(v)].

OHA will monitor progress in meeting the ELI requirement throughout the fiscal year. Extremely low-income families will be selected ahead of other eligible families on an as-needed basis to ensure the income targeting requirement is met.

OHA Policy

Under MTW Authority, OHA is authorized to determine income qualifications for participation in the rental assistance program that differ from the currently mandated program requirements in the 1937 Act and its implementing regulation, as long as the requirements that: i) at least 75 percent of those assisted under the demonstration are "very low income" as defined in section 3(b)(2) of the 1937 Act, ii) substantially the same number of low-income persons are assisted under the demonstration as would be without the MTW authorizations contained herein, and iii) a comparable mix of families are assisted under the Agreement as would have been otherwise in Section I.C. if the MTW Agreement are met. *This authorization waives certain provisions of Sections 16(b) and 8(o)(4) of the 1937 Act and 24 CFR 5.603, 5.609, 5.611, 5.628, and 982.201 as necessary to implement the Agency's Annual MTW Plan.*

4-III.D. NOTIFICATION OF SELECTION

When the family has been selected from the waiting list, OHA must notify the family.

OHA Policy

OHA will notify the family by first class mail when it is selected from the waiting list. The notice will inform the family of the following:

Date, time, and location of the scheduled application interview, including any procedures for rescheduling the interview

Who is required to attend the interview

Documents that must be provided at the interview to document the legal identity of household members, including information about what constitutes acceptable documentation

Documents that must be provided at the interview to document eligibility for a preference, if applicable

Other documents and information that should be brought to the interview

If a notification letter is returned to OHA with no forwarding address, the family will be sent a Denial Letter to the last known address and any alternate mailing address known to OHA. After the response period has expired, the applicant family will be removed from the waiting list without further notice.

4-III.E. THE APPLICATION INTERVIEW

HUD recommends that OHA obtain the information and documentation needed to make an eligibility determination through a private interview [HCV GB, pg. 4-16]. Being invited to attend an interview does not constitute admission to the program.

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if the PHA determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by the PHA [Notice PIH 2012-10].

Reasonable accommodation must be made for persons with disabilities who are unable to attend an interview due to their disability.

Families selected from the waiting list are required to participate in an eligibility interview.

The head of household and all adult members of the household must attend the interview together. Verification of information pertaining to adult members of the household not present at the interview will not begin until signed release forms are returned to OHA.

The interview will be conducted only if the head of household and all adult members provide appropriate documentation of legal identity (Chapter 7 provides a discussion of proper documentation of legal identity). If the family representative does not provide the required documentation, the appointment may be rescheduled when the proper documents have been obtained.

If the family is claiming a waiting list preference, the family must provide documentation to verify their eligibility for a preference (see Chapter 7). If the family is verified as eligible for the preference, OHA will proceed with the interview. If OHA determines the family is not eligible for the preference, the interview will not proceed and the family will be placed back on the waiting list according to their updated preference ranking and lottery number.

The family must provide the information necessary to establish the family's eligibility, including suitability, and to determine the appropriate amount of rent the family will pay. The family must also complete required forms, provide required signatures, and submit required documentation. If any materials are missing, OHA will provide the family with a written list of items that must be submitted.

Any required documents or information that the family is unable to provide at the interview must be provided within 10 business days of the interview (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of Social Security numbers and eligible noncitizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (see Chapter 3).

An advocate, interpreter, or other assistant may assist the family with the application and the interview process. Interviews will be conducted in English. For limited English proficient (LEP) applicants, OHA will provide translation services in accordance with OHA's LAP. If the family is unable to attend a scheduled interview, the family should contact OHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, OHA will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without OHA approval will have their applications made inactive based on the family's failure to supply information needed to determine eligibility. The second appointment letter will include a Statement of a Denial indicating that failure to appear for the appointment without a request to reschedule will be interpreted to mean that the family is no longer interested and their application will be made inactive.

4-III.F. COMPLETING THE APPLICATION PROCESS

OHA must verify all information provided by the family (see Chapter 7). Based on verified information related to the eligibility requirements. OHA must make a final determination of eligibility (see Chapter 3) and must confirm that the family qualified for any special admission, targeted admission, or selection preference that affected the order in which the family was selected from the waiting list.

If OHA determines that the family is eligible to receive assistance, OHA will invite the family to attend a briefing in accordance with the policies in Chapter 5.

OHA must notify any family determined to be ineligible for admission of the basis for such determination, and must provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination (see Chapter 16).

If OHA determines that the family is ineligible, OHA will send written notification of the ineligibility determination within 10 business days of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review (see Chapter 16).

If OHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the OHA can move to deny the application. See Section 3-III.F. for OHA's policy regarding such circumstances.

Upon making an eligibility determination, OHA must provide the family a notice of VAWA rights as well as the HUD VAWA self-certification form (form HUD-5382) in accordance with the Violence against Women Act of 2013, and as outlined in 16-VII.C. The notice and self-certification form must accompany the written notification of eligibility determination. This notice must be provided in both of the following instances: (1) when a family is notified of its eligibility; or (2) when a family is notified of its ineligibility.

Chapter 6

INCOME AND SUBSIDY DETERMINATIONS

[24 CFR Part 5, Subparts E and F; 24 CFR 982]

INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's payment and ~~the PHAOHA~~'s subsidy. OHA will use the policies and methods described in this chapter to ensure that only eligible families receive assistance and that no family pays more or less than its obligation under the regulations. This chapter describes HUD regulations and OHA policies related to these topics in three parts as follows:

Part I: Annual Income. HUD regulations specify the sources of income to include and exclude to arrive at a family's annual income. These requirements and OHA policies for calculating annual income are found in Part I.

Part II: Adjusted Income. Once annual income has been established, HUD regulations require OHA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and OHA policies for calculating adjusted income are found in Part II.

Part III: Calculating Family Share and PHA Subsidy. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining PHA subsidy and required family payment.

Under MTW Authority, OHA is authorized to adopt and implement any reasonable policy to establish payments, rents or subsidy levels from tenant-based assistance that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. OHA is also authorized to adopt and implement any reasonable policies to calculate the tenant portion of rent that differ from the currently mandated program requirement in the 1937 Act and its implementing regulations. *This authorization waives certain provisions of Section 8(o)(1), 8(o)(2), 8(o)(3), 8(o)(10), and 8(o)(13)(H)-(I) of the 1937 Act and 24 CFR 982.508, 982.503 and 982.518, as necessary to implement the Agency's Annual MTW Plan.*

PART I: ANNUAL INCOME

6-I.A. OVERVIEW

The general regulatory definition of *annual income* shown below is from 24 CFR 5.609.

5.609 Annual income.

- (a) Annual income means all amounts, monetary or not, which:
 - (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
 - (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
 - (3) Are not specifically excluded in paragraph [5.609(c)].
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

In addition to this general definition, HUD regulations establish policies for treating specific types of income and assets. The full texts of those portions of the regulations are provided in exhibits at the end of this chapter as follows:

- Annual Income Inclusions (Exhibit 6-1)
- Annual Income Exclusions (Exhibit 6-2)
- Treatment of Family Assets (Exhibit 6-3)
- Earned Income Disallowance for Persons with Disabilities (Exhibit 6-4)
- The Effect of Welfare Benefit Reduction (Exhibit 6-5)

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. HUD regulations present income inclusions and exclusions separately [24 CFR 5.609(b) and 24 CFR 5.609(c)]. In this Plan, however, the discussions of income inclusions and exclusions are integrated by topic (e.g., all policies affecting earned income are discussed together in section 6-I.D). Verification requirements for annual income are discussed in Chapter 7.

OHA Policy

Under MTW Authority, OHA may adopt and implement reasonable policy for verifying family income and composition and for determining resident eligibility that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. This authorization waives certain provisions of 24 CFR 982.516 and 982 Subpart E, as necessary to implement the Agency's Annual MTW Plan.

Under MTW authority, OHA may provide elderly and disabled families with an option to have their income calculated every three years with a fixed annual cost of living increase or decrease in rent based on the annual cost of living increase for Social Security, **and working families with the option to have income calculated biennially.**

6-I.B. HOUSEHOLD COMPOSITION AND INCOME

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources is excluded [24 CFR 5.609(c)(5)].
Foster child or foster adult	Income from all sources is excluded [24 CFR 5.609(c)(2)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or cohead)	Employment income above \$480/year is excluded [24 CFR 5.609(c)(11)]. All other sources of income, except those specifically excluded by the regulations, are included.

Temporarily Absent Family Members

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit [HCV GB, p. 5-18].

OHA Policy

Generally an individual who is or is expected to be absent from the assisted unit for 60 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the assisted unit for more than 60 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below. Reference chapters 3 and 11 for additional information on absentee family members.

Absent Students

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to

OHA indicating that the student has established a separate household or the family declares that the student has established a separate household.

Absences Due to Placement in Foster Care

Children temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR 5.403].

OHA Policy

If a child has been placed in foster care, OHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

Absent Head, Spouse or Cohead

OHA Policy

An employed head, spouse, or cohead absent from the unit more than 60 consecutive days due to employment will continue to be considered a family member. (Refer to Chapter 3)

Absences Due to Military Duty

A family member is temporarily absent from the unit if the family can return to the unit within 30 days of the conclusion of active duty services and if not absent from the unit for more than 180 days. The remaining family members can remain in the unit by paying the required rent. If the length of service extends beyond 180 days, OHA may waive the 180 day limit subject to verification of the absence due to active duty service.

Family Members Permanently Confined for Medical Reasons

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted [HCV GB, p. 5-22].

OHA Policy

If there is a question about the status of a family member, OHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or cohead qualifies as an elderly person or a person with disabilities

Joint Custody of Children

Dependents that are subject to a joint custody arrangement will be considered a member of the family if they live with the applicant or resident family more than 50 percent of the time.

When more than one applicant or assisted family (regardless of program) claims the same dependents as family members, the family with primary physical custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, OHA will make the determination based on available documents such as court orders or an IRS return showing which family has claimed the child for income tax purposes. (Refer to Chapter 3.)

Caretakers for a Child

Upon notification of head of household and spouse/co-head's death or abandonment of a unit, OHA will take the following actions:

1. Caretaker not to apply for eligibility

- a. The caretaker will notify OHA in writing of their decision to remove the child from the unit and will not request to apply for eligibility as program participant HOH. The family will receive 30 days' notice of program termination and the owner will receive 30 days' notice of contract cancellation.
- b. The caretaker will notify OHA in writing that they will remain in the unit; however, they will not request to apply for eligibility as program participant HOH. The family will receive 30 days' notice of program termination and the owner will receive 30 days' notice of contract cancellation.

2. Caretaker to apply for eligibility while living in unit

- a. Only a head of household will be added to the voucher and subsidy size cannot be increased. If the new HOH has additional family members, the mixed family proration will be used to calculate the subsidy. The new members are considered ineligible based on the Caretaker for a Child Rule Only.
- b. Within 30 days require the designated caretaker or visitor to meet OHA eligibility requirements and provide a letter from the owner authorizing them to reside in the unit as a visitor.
- c. If a caretaker has assumed **responsibility** for a child without formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 30 days. During the initial 30 day period, the caretaker must initiate formal custody or legal guardianship; and acquire owner approval. If after 30 days has elapsed and the caretaker has not initiated the process to obtain formal custody or legal guardianship, the HAP contract will be cancelled and the family will be terminated.
- d. When that custody or guardianship legally has been awarded to a caretaker, as head of household (subject to the caretaker meeting all OHA eligibility admissions criteria for Section 8 program participation). The exception is if a property owner refused to execute a lease with the awarded caretaker. In this case, the caretaker will request a transfer voucher.
- e. The head of household will no longer qualify for program participation if the minor is no longer a member of the household.

- f. During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income. OHA will conduct an interim re-examination to establish a HAP payment for the owner.

6-I.C. ANNUAL INCOME

OHA is required to count all income “anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date.” [24 CFR 5.609(a)(2)]. Policies related to anticipating annual income are provided below.

Basis of Annual Income Projection

OHA generally will use current or historical circumstances to determine income for the coming 12-month period. HUD authorizes OHA to use other than current circumstances to anticipate income when:

- An imminent change in circumstances is expected [HCV GB, p. 5-17]
- It is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income) [24 CFR 5.609(d)]
- OHA believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

OHA is required to use HUD’s Enterprise Income Verification (EIV) system in its entirety as a third party source to verify employment and income information, and to reduce administrative subsidy payment errors in accordance with HUD administrative guidance [24 CFR 5.233(a)(2)] and PIH Notice 2018-18.

HUD allows OHA to use tenant-provided documents (pay stubs) to project income once EIV data has been received in such cases where the family does not dispute the EIV employer data and where OHA does not determine it is necessary to obtain additional third-party data.

OHA Policy

When EIV is obtained and the family does not dispute the EIV employer data, OHA will use current tenant-provided documents to project annual income. When the tenant-provided documents are pay stubs, OHA will make every effort to obtain current and consecutive pay stubs dated within the last 120 days from the date of reexamination.

OHA will obtain written and/or oral third-party verification in accordance with the verification requirements and policy in Chapter 7 in the following cases:

If EIV or other UIV data is not available,

If the family disputes the accuracy of the EIV employer data, and/or

If OHA determines additional information is needed.

In such cases, OHA will review and analyze current data to anticipate annual income. In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how OHA annualized projected income.

When OHA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), OHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income. Anytime current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to OHA to show why the historic pattern does not represent the family's anticipated income.

Known Changes in Income

If OHA verifies an upcoming increase or decrease in income, annual income will be calculated by applying each income amount to the appropriate part of the 12-month period.

Example: An employer reports that a full-time employee who has been receiving \$6/hour will begin to receive \$6.25/hour in the eighth week after the effective date of the reexamination. In such a case OHA would calculate annual income as follows: $(\$6/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$6.25 \times 40 \text{ hours} \times 45 \text{ weeks})$.

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases, OHA will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if OHA's policy on reexaminations does not require interim reexaminations for other types of changes.

When tenant-provided third-party documents are used to anticipate annual income, they will be dated within the last 60 days of the reexamination interview date.

Projecting Income

In HUD's EIV webcast of January 2008, HUD made clear that OHA is not to use EIV quarterly wages to project annual income.

Using Up-Front Income Verification (UIV) to Calculate Income

PHAs are required to use HUD's Enterprise Income Verification (EIV) system in its entirety to verify tenant employment and income information during mandatory reexaminations of family composition and income, and to reduce administrative subsidy payment errors in

accordance with HUD administrative guidance [24 CFR 5.233(a)(2)] [and PIH Notice 2018-18.](#)

HUD allows PHAs to use UIV information in conjunction with family-provided documents to anticipate income [UIV].

OHA Policy

OHA procedures for determining annual income will include the use of UIV methods approved by HUD. If the UIV information is not available, OHA will use family-provided documents dated within the last 60 days of OHA interview date.

OHA will follow “HUD Guidelines for Projecting Annual Income When Up-Front Income Verification (UIV) Data Is Available” in handling differences between UIV and family-provided income data. The guidelines depend on whether a difference is substantial or not. HUD defines *substantial difference* as a difference of \$200 or more per month.

No Substantial Difference. If UIV information for a particular income source differs from the information provided by a family by less than \$200 per month, OHA will follow these guidelines:

If the UIV figure is less than the family’s figure, OHA will use the family’s information.

If the UIV figure is more than the family’s figure, OHA will use the UIV data unless the family provides documentation of a change in circumstances to explain the discrepancy (e.g., a reduction in work hours). Upon receipt of acceptable family-provided documentation of a change in circumstances, OHA will use the family-provided information.

Substantial Difference. If UIV information for a particular income source differs from the information provided by a family by \$200 or more per month, OHA will follow these guidelines:

OHA will request written third-party verification from the discrepant income source in accordance with 24 CFR 5.236(b)(3)(i).

When OHA cannot readily anticipate income (e.g., in cases of seasonal employment, unstable working hours, or suspected fraud), OHA will review historical income data for patterns of employment, paid benefits, and receipt of other income.

OHA will analyze all UIV, third-party, and family-provided data and attempt to resolve the income discrepancy.

OHA will use the most current verified income data and, if appropriate, historical income data to calculate anticipated annual income.

6-I.D. EARNED INCOME

Types of Earned Income Included in Annual Income

Wages and Related Compensation

The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services is included in annual income. [24 CFR 5.609(b)(1)]

OHA Policy

For persons who regularly receive bonuses or commissions, OHA will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, OHA will use the prior year amounts. In either case the family may provide, and OHA will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, OHA will count only the amount estimated by the employer. **The file will be documented appropriately.**

Some Types of Military Pay

All regular pay, special pay and allowances of a member of the Armed Forces are counted [24 CFR 5.609(b)(8)] except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(c)(7)].

Types of Earned Income Not Counted in Annual Income

Temporary, Nonrecurring, or Sporadic Income [24 CFR 5.609(c)(9)]

This type of income (including gifts) is not included in annual income. Sporadic income includes temporary payments from the U.S. Census Bureau for employment lasting no longer than 180 days [Notice PIH 2009-19].

OHA Policy

Sporadic income is income that is received periodically and cannot be reliably predicted. For example, the income of an individual who works occasionally as a handyman would be considered sporadic if future work could not be anticipated and no historic, stable pattern of income existed.

Children's Earnings [24 CFR 5.609(c)(1)]

Employment income earned by children (including foster children) under the age of 18 years is not included in annual income. (See Eligibility chapter for a definition of *foster children*.)

Certain Earned Income of Full-Time Students

Earnings in excess of \$480 for each full-time student 18 years old or older (except for the head, or cohead) are not counted [24 CFR 5.609(c)(11)]. To be considered "full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

Income of a Live-in Aide

Income earned by a live-in aide, as defined in [24 CFR 5.403], is not included in annual income [24 CFR 5.609(c)(5)]. (See Eligibility chapter for a full discussion of live-in aides.)

Income Earned under Certain Federal Programs

Income from some federal programs is specifically excluded from consideration as income [24 CFR 5.609(c)(17)], including:

- 1. Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- 2. Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b))

- 3. Awards under the federal work-study program (20 U.S.C. 1087 uu)
- 4. Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- 5. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- 6. Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

Resident Service Stipend

Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for OHA or an owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of OHA's governing board. No resident may receive more than one such stipend during the same period of time [24 CFR 5.600(c)(8)(iv)].

State and Local Employment Training Program

Incremental earnings and benefits to any family member resulting from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program [24 CFR 5.609(c)(8)(v)].

OHA Policy

OHA defines *training program* as "a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period of time. It is designed to lead to a higher level of proficiency, and it enhances the individual's ability to obtain employment. It may have performance standards to measure proficiency. Training may include, but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education" [expired Notice PIH 98-2, p. 3].

OHA defines *incremental earnings and benefits* as the difference between (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3-4].

In calculating the incremental difference, OHA will use as the pre-enrollment income the total annualized amount of the family member's welfare assistance and earnings reported on the family's most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with OHA's interim reporting requirements (see chapter on reexaminations).

HUD-Funded Training Programs

Amounts received under training programs funded in whole or in part by HUD [24 CFR 5.609(c)(8)(i)] are excluded from annual income. Eligible sources of funding for the training include operating subsidy, Section 8 administrative fees, and modernization, Community Development Block Grant (CDBG), HOME program, and other grant funds received from HUD.

OHA Policy

To qualify as a training program, the program must meet the definition of *training program* provided above for state and local employment training programs.

Earned Income Tax Credit. Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)), are excluded from annual income [24 CFR 5.609(c)(17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee's payroll check.

Earned Income Disallowance. The earned income disallowance is discussed in section 6-I.E below.

6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES [24 CFR 5.617; Streamlining Final Rule (SFR) Federal Register 3/8/16]

The earned income disallowance (EID) encourages people to enter the work force by not including the full value of increases in earned income for a period of time. The full text of 24 CFR 5.617 is included as Exhibit 6-4 at the end of this chapter. Eligibility criteria and limitations on the disallowance are summarized below.

Eligibility

This disallowance applies only to disabled individuals in families already participating in the HCV program (not at initial examination). To qualify, the family must experience an increase in annual income that is the result of one of the following events:

- Employment of a family member who was previously unemployed for one or more years prior to employment. *Previously unemployed* includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.
- Increased earnings by a family member whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].
- New employment or increased earnings by a family member who has received benefits or services under Temporary Assistance for Needy Families (TANF) or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least \$500.

OHA Policy [MTW]

In accordance with MTW Activity #13-01, Households participating in the MTW Rent Reform Pilot are not eligible for EID.

Calculation of the Disallowance

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "baseline income." The family member's baseline income is his or her income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that he or she is participating in the EID.

While qualification for the disallowance is the same for all families, calculation of the disallowance will differ depending on when the family member qualified for the EID. Participants qualifying prior to May 9, 2016, will have the disallowance calculated under the "Original Calculation Method" described below which requires a maximum lifetime disallowance period of up to 48 consecutive months. Participants qualifying on or after May 9, 2016, will be subject to the "Revised Calculation Method." Which shortens the lifetime disallowance period to 24 consecutive months.

Under both the original and new methods, the EID eligibility criteria, the benefit amount, the single lifetime eligibility requirement and the ability of the applicable family member to stop and restart employment during the eligibility period are the same.

Original Calculation Method (Prior to March 2016)

Initial 12-Month Exclusion

During the initial 12-month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded. The 12 months are cumulative and need not be consecutive.

OHA Policy

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

Second 12-Month Exclusion and

During the second 12-month exclusion period, the exclusion is reduced to half (50 percent) of any increase in income attributable to employment or increased earnings. The 12 months are cumulative and need not be consecutive.

Lifetime Limitation

The EID has a four-year (48-month) lifetime maximum. The four-year eligibility period begins at the same time that the initial exclusion period begins and ends 48 months later. The one-time

eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance.

OHA Policy

During the 48-month eligibility period, OHA will schedule and conduct an interim reexamination each time there is a change in the family member's annual income that affects or is affected by the EID (e.g., when the family member's income falls to a level at or below his/her prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

Revised Post-March 2016 Calculation Method (as amended by Streamlining Final Rule (SFR) Federal Register 3/8/16)

Initial 12-Month Exclusion

During the initial exclusion period of 12 consecutive months, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded.

OHA Policy

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

Second 12-Month Exclusion

During the second exclusion period of 12 consecutive months, OHA must exclude at least 50 percent of any increase in income attributable to employment or increased earnings.

OHA Policy

During the second 12-month exclusion period, OHA will exclude 100 percent of any increase in income attributable to new employment or increased earnings.

Lifetime Limitation

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. During the 24-month period, an individual remains eligible for EID even if they begin to receive assistance from a different housing agency, move between public housing and Section 8 assistance, or have breaks in assistance.

6.I.F. BUSINESS INCOME [24 CFR 5.609(b)(2)]

Annual income includes "the net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business

or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family” [24 CFR 5.609(b)(2)].

Business Expenses

Net income is “gross income less business expense” [HCV GB, p. 5-19].

OHA Policy

To determine business expenses that may be deducted from gross income, OHA will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

Business Expansion

HUD regulations do not permit PHAs to deduct from gross income expenses for business expansion.

OHA Policy

Business expansion is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

Capital Indebtedness

HUD regulations do not permit OHA to deduct from gross income the amortization of capital indebtedness.

OHA Policy

Capital indebtedness is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means OHA will allow as a business expense interest, but not principal, paid on capital indebtedness.

Negative Business Income

If the net income from a business is negative, no business income will be included in annual income; a negative amount will not be used to offset other family income.

Withdrawal of Cash or Assets from a Business

HUD regulations require OHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

OHA Policy

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of a tenant family provided an up-front loan of \$2,000 to help a business get started, OHA will not count as income any withdrawals

from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.

Co-owned Businesses

OHA Policy

If a business is co-owned with someone outside the family, the family must document the share of the business it owns. If the family's share of the income is lower than its share of ownership, the family must document the reasons for the difference.

6-I.G. ASSETS [24 CFR 5.609(b)(3) and 24 CFR 5.603(b)]

Overview

There is no asset limitation for participation in the HCV program. However, HUD requires that OHA include in annual income the “interest, dividends, and other net income of any kind from real or personal property” [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, OHA must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

- How the value of the asset will be determined
- How income from the asset will be calculated

Exhibit 6-1 provides the regulatory requirements for calculating income from assets [24 CFR 5.609(b)(3)], and Exhibit 6-3 provides the regulatory definition of *net family assets*. This section begins with a discussion of general policies related to assets and then provides HUD rules and OHA policies related to each type of asset.

Optional policies for family self-certification of assets are found in Chapter 7.

General Policies

Income from Assets

OHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. As is true for all sources of income, HUD authorizes OHA to use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected (2) it is not feasible to anticipate a level of income over 12 months or (3) OHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income but the property is currently vacant, OHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

OHA Policy

Any time current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases, the family may present information and documentation to OHA to show why the asset income determination does not represent the family's anticipated asset income.

Valuing Assets

The calculation of asset income sometimes requires PHAs to make a distinction between an asset's market value and its cash value.

- The market value of an asset is its worth (e.g., the amount a buyer would pay for real estate or the balance in an investment account).
- The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.

OHA Policy

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28].

Lump-Sum Receipts

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.)

Imputing Income from Assets [24 CFR 5.609(b)(3), Notice PIH 2012-29, as amended by MTW]

When the family has net family assets in excess of \$50,000, OHA will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by the current established passbook savings rate.

OHA Policy

OHA will include income from an asset only if the net family assets exceed \$50,000. The asset(s) are to be properly verified and the verifications must be placed in the family's file. OHA will review the Passbook rate annually on July 1 and ensure that it remains within 0.75 percent of the Savings National Rates at:
www.fdic.gov/regulations/resources/rates/

Determining Actual Anticipated Income from Assets

It may or may not be necessary for OHA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is not based on the property's market value. However, if the asset is a savings account, the anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

Withdrawal of Cash or Liquidation of Investments

Any withdrawal of cash or assets from an investment will be included in income except to the extent that the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement investment planfund.

Jointly-Owned Assets

The regulation at 24 CFR 5.609(a)(4) specifies that annual income includes “amounts derived (during the 12-month period) from assets to which any member of the family has access.”

OHA Policy

If an asset is owned by more than one person and any family member has unrestricted access to the asset, OHA will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners.

If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, OHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, OHA will prorate the asset evenly among all owners. ~~This will be established in our procedures.~~

Assets Disposed Of for Less than Fair Market Value [24 CFR 5.603(b)]

HUD regulations require the OHA to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

Minimum Threshold

OHA Policy

OHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than \$50,000.

When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual recertifications, the family may request an interim recertification to eliminate consideration of the asset(s).

Assets placed by the family in non-revocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.

Separation or Divorce

The regulation also specifies that assets are not considered disposed of for less than fair market value if they are disposed of as part of a separation or divorce settlement and the applicant or tenant receives important consideration not measurable in dollar terms.

OHA Policy

All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

Foreclosure or Bankruptcy

Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale.

Family Declaration

OHA Policy

Families must sign a declaration form at initial certification and each scheduled recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. OHA may verify the value of the assets disposed of if other information available to OHA does not appear to agree with the information reported by the family.

Types of Assets

Checking and Savings Accounts

For regular checking accounts and savings accounts, *cash value* has the same meaning as *market value*. If a checking account does not bear interest, the anticipated income from the account is zero.

OHA Policy

In determining the value of a checking account, OHA will use the average monthly balance for a minimum of 3 months and has discretion to request additional documents.

In determining the value of a savings account, OHA will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account, OHA will multiply the value of the account by the current rate of interest paid on the account.

Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds

Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

OHA Policy

In determining the market value of an investment account, OHA will use the value of the account on the most recent investment report.

How anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings). When the anticipated rate of return is not known (e.g., stocks), OHA will calculate asset income based on the earnings for the most recent reporting period.

Equity in Real Property or Other Capital Investments

Equity (cash value) in a property or other capital asset is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset [HCV GB, p. 5-25].

OHA Policy

In determining the equity, OHA will determine market value by examining recent sales of at least three properties in the surrounding or similar neighborhood that possess comparable factors that affect market value.

OHA will first use the payoff amount for the loan (mortgage) as the unpaid balance to calculate equity. If the payoff amount is not available, OHA will use the basic loan balance information to deduct from the market value in the equity calculation.

Equity in real property and other capital investments is considered in the calculation of asset income except for the following types of assets:

- 1. Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]
- 2. The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b)]
- 3. Equity in owner-occupied cooperatives and manufactured homes in which the family lives [HCV GB, p. 5-25]
- 4. Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-IF
- 5. Interests in Indian Trust lands [24 CFR 5.603(b)]
- 6. Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

OHA must also deduct from the equity the reasonable costs for converting the asset to cash. Using the formula for calculating equity specified above, the net cash value of real property is the market value of the loan (mortgage) minus the expenses to convert to cash [Notice PIH 2012-3].

A family may have real property as an asset in two ways: (1) owning the property itself and (2) holding a mortgage or deed of trust on the property. In the case of a property owned by a family

member, the anticipated asset income generally will be in the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero.

In the case of a mortgage or deed of trust held by a family member, the outstanding balance (unpaid principal) is the cash value of the asset. The interest portion only of payments made to the family in accordance with the terms of the mortgage or deed of trust is counted as anticipated asset income.

OHA Policy

In the case of capital investments owned jointly with others not living in a family's unit, a prorated share of the property's cash value will be counted as an asset unless OHA determines that the family receives no income from the property and is unable to sell or otherwise convert the asset to cash.

OHA Policy

~~For the purposes of calculating expenses to convert to cash for real property, OHA will use 10% of the market value of the home.~~

Trusts

A *trust* is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

Revocable Trusts

If any member of a family has the right to withdraw the funds in a trust, the value of the trust is considered an asset [HCV GB, p. 5-25]. Any income earned as a result of investment of trust funds is counted as actual asset income, whether the income is paid to the family or deposited in the trust.

Non-revocable Trusts

In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset. However, any income distributed to the family from such a trust is counted as a periodic payment or a lump-sum receipt, as appropriate [24 CFR 5.603(b)]. (Periodic payments are covered in section 6-I.H. Lump-sum receipts are discussed earlier in this section.)

Retirement Accounts

Company Retirement/Pension Accounts

In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, OHA must know whether the money is accessible before retirement [HCV GB, p. 5-26].

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset [HCV GB, p. 5-26].

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 5-26], except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, see section 6-I.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

IRA, Keogh, and Similar Retirement Savings Accounts

IRA, Keogh, and similar retirement savings accounts are counted as assets even though early withdrawal would result in a penalty [HCV GB, p. 5-25].

Personal Property

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset [HCV GB, p. 5-25].

OHA Policy

In determining the value of personal property held as an investment, OHA will use the family's estimate of the value. However, OHA also may obtain an appraisal if appropriate to confirm the value of the asset. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal.

Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.

Necessary items of personal property are not considered assets [24 CFR 5.603(b)].

OHA Policy

Necessary personal property consists of items such as clothing, furniture, household furnishings, jewelry that is not held as an investment, and vehicles, including those specially equipped for persons with disabilities.

Life Insurance

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of the value of the family's assets [HCV GB 5-25]. The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

6-I.H. PERIODIC PAYMENTS

Periodic payments are forms of income received on a regular basis. HUD regulations specify periodic payments that are and are not included in annual income.

Periodic Payments Included in Annual Income

- Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments

are counted only after they exceed the amount contributed by the family [24 CFR 5.609(b)(4) and (b)(3)].

- Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 CFR 5.609(b)(4) and HCV, p. 5-14]

Lump-Sum Payments for the Delayed Start of a Periodic Payment

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income. Additionally, any deferred disability benefits that are received in a lump-sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [24 CFR 5.609(c)(14)].

OHA Policy

When a delayed-start payment is received and reported during the period in which OHA is processing an annual reexamination, OHA will adjust the tenant rent retroactively for the period the payment was intended to cover. The family may pay in full any amount due or request to enter into a repayment agreement with OHA.

See the chapter on reexaminations for information about a family's obligation to report lump-sum receipts between annual reexaminations.

Note: Lump sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income. Additionally, any deferred disability benefits that are received in a lump-sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [24 CFR 5.609(c)(14)]

Treatment of Overpayment Deductions from Social Security Benefits

OHA must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, OHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2012-10].

Periodic Payments Excluded from Annual Income

1. Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone) [24 CFR 5.609(c)(2)]. Kinship guardianship assistance payments (Kin-GAP) and other similar guardianship payments are treated the same as foster care payments and are likewise excluded from annual income [Notice PIH 2008-30].

OHA Policy

OHA will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency [HCV GB, p. 5-18].

2. Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
3. Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]
4. Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]
5. Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)]. *Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.
6. Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.J.) [24 CFR 5.609(b)(4)].
7. Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [24 CFR 5.609(c)(14)].

6-I.I. PAYMENTS IN LIEU OF EARNINGS

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income [24 CFR 5.609(b)(5)] if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts [24 CFR 5.609(c)(3)]. (See also the discussion of periodic payments in section 6-I.H and the discussion of lump-sum receipts in section 6-I.G.)

6-I.J. WELFARE ASSISTANCE

Overview

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments [24 CFR 5.603(b)].

Sanctions Resulting in the Reduction of Welfare Benefits [24 CFR 5.615]

OHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-5. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

Covered Families

The families covered by 24 CFR 5.615 are those "who receive welfare assistance or other public assistance benefits ('welfare benefits') from a State or other public agency ('welfare agency') under a program for which Federal, State or local law requires that a member of the family must

participate in an economic self-sufficiency program as a condition for such assistance” [24 CFR 5.615(b)]

Imputed Income

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, OHA must include in annual income “imputed” welfare income. OHA must request that the welfare agency inform OHA when the benefits ~~of a public housing resident~~ are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements [24 CFR 5.615(b)(2)].

Offsets

The amount of the imputed income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero [24 CFR 5.615(c)(4)].

6-I.K. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(b)(7)]

Annual income includes periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing with an assisted family.

Alimony and Child Support

OHA must count alimony or child support amounts awarded as part of a divorce or separation agreement.

OHA will count court-awarded amounts for alimony and child support unless OHA verifies that (1) the payments are not being made and (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47].

Families who do not have court-awarded alimony and child support awards are not required to seek a court award and are not required to take independent legal action to obtain collection.

Regular Contributions or Gifts

OHA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with a tenant family [24 CFR 5.609(b)(7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

OHA Policy

Examples of regular contributions include: (1) regular payment of a family’s bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets

provided to any family member on a regular basis, and (3) “in-kind” contributions such as groceries and clothing provided to a family on a regular basis.

Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by OHA. For contributions that may vary from month to month (e.g., utility payments), OHA will include an average amount based upon past history.

6-I.L. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9); Notice PIH 2015-21]

In 2005, Congress passed a law (for Section 8 programs only) requiring that certain student financial assistance be included in annual income. Prior to that, the full amount of student financial assistance was excluded. For some students, the full exclusion still applies.

Student Financial Assistance Included in Annual Income [24 CFR 5.609(b)(9); FR 4/10/06; Notice PIH 2015-21]

The regulation requiring the inclusion of certain student financial assistance applies only to students who satisfy all of the following conditions:

- They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 1965.
- They are seeking or receiving Section 8 assistance on their own—that is, apart from their parents—through the HCV program, the project-based voucher program, or the moderate rehabilitation program.
- They are under 24 years of age **OR** they have no dependent children.

For students who satisfy these three conditions, any financial assistance in excess of tuition received: (1) under the 1965 HEA, (2) from a private source, or (3) from an institution of higher education, as defined under the 1965 HEA, must be included in annual income.

To determine annual income in accordance with the above requirements, **the PHAOHA** will use the definitions of *dependent child*, *institution of higher education*, and *parents* in Section 3-II.E, along with the following definitions [FR 4/10/06, pp. 18148-18150]:

- *Assistance under the Higher Education Act of 1965* includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.
- *Assistance from private sources* means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.
- *Tuition* and fees are defined in the same manner in which the Department of Education defines tuition and fees [Notice PIH 2015-21]:
 - This is the amount of tuition and required fees covering a full academic year most frequently charged to students.
 - The amount represents what a typical student would be charged and may not be the same for all students at an institution.
 - If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an academic year is used to estimate average tuition.

- Required fees include all fixed -sum charges that are required of a large proportion of all students. Examples include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).

Expenses related to attending an institution of higher education must **not** be included as tuition. Examples include, but are not limited to, room and board, books, supplies, meal plans, transportation and parking, student health insurance plans, and other non-fixed-sum charges.

Student Financial Assistance Excluded from Annual Income [24 CFR 5.609(c)(6)]

Any student financial assistance not subject to inclusion under 24 CFR 5.609(b)(9) is fully excluded from annual income under 24 CFR 5.609(c)(6), whether it is paid directly to the student or to the educational institution the student is attending. This includes any financial assistance received by:

- Students residing with parents who are seeking or receiving Section 8 assistance
- Students who are enrolled in an educational institution that does **not** meet the 1965 HEA definition of *institution of higher education*
- Students who are over 23 **AND** have at least one dependent child, as defined in Section 3-II.E
- Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.
- Required student fees other than tuition. These fees often include, but are not limited to student service fees, student association fees, student activity fees, and lab fees. (this provision does not apply to the Rent Supplement, Section 236, Section 221(d)(3) or (d)(5) programs.)

6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

Other exclusions contained in 24 CFR 5.609(c) that have not been discussed earlier in this chapter include the following:

- 1. Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- 2. Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
- 3. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii))]
- 4. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
- 5. Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c)(12)]
- 6. Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]

- 7 Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- 8 Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17)], FR Notice 5/20/14. HUD publishes an updated list of these exclusions periodically. It includes:
 - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
 - (b) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
 - (c) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
 - (d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
 - (e) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
 - (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
 - (g) Payments received under programs funded in whole or in part under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
 - (h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
 - (i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
 - (j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b))
 - (k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010
 - (l) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
 - (m) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs)
 - (n) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
 - (o) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
 - (p) Payments received under 38 U.S.C. 1833(c) to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida
 - (q) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)

- (r) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- (s) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (t) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965j, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109–249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109–249) (See See Section 6-I.L. for exceptions.)
- (v) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (w) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)
- (x) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002
- (y) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013–30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a))
- (z) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations

PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

~~Under MTW Authority, OHA may adopt and implement reasonable policy for verifying family income and composition and for determining resident eligibility that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations.~~

Overview

HUD regulations require OHA to deduct from annual income any of five mandatory deductions for which a family qualifies. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611.

5.611(a) Mandatory deductions. In determining adjusted income, the responsible entity (OHA) must deduct the following amounts from annual income:

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family or disabled family;
- (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
 - (i) Unreimbursed medical expenses of any elderly family or disabled family;
 - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
- (4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

OHA Policy

All mandatory deductions are eliminated for all households participating in the MTW Rent Reform Pilot (Activity #13-01).

This part covers policies related to these mandatory deductions. Verification requirements related to these deductions are found in Chapter 7, Verifications.

Anticipating Expenses

OHA Policy

Generally, OHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and nonschool periods and cyclical medical expenses), OHA will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, OHA will include as an eligible expense the portion of the debt that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. OHA may require the family to provide documentation of payments made in the preceding year.

6-II.B. DEPENDENT DEDUCTION

A deduction of \$480 is taken for each dependent [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION

A single deduction of \$400 is taken for any elderly or disabled family [24 CFR 5.611(a)(2)]. An *elderly family* is a family whose head, spouse, cohead, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, cohead, or sole member is a person with disabilities [24 CFR 5.403].

OHA Policy

Households that participate in the MTW Rent Reform Pilot will not be using the standard deductions.

6-II.D. MEDICAL EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i)]

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three percent of annual income.

The medical expense deduction is permitted only for families in which the head, spouse, or cohead is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted [VG, p. 28].

Definition of Medical Expenses

HUD regulations define *medical expenses* at 24 CFR 5.603(b) to mean “medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.”

OHA Policy

The most current IRS Publication 502, *Medical and Dental Expenses*, will be used to determine the costs that qualify as medical expenses.

OHA Policy

Expenses for Companion Animals

Requests for Companion animals are considered a reasonable accommodation and expenses related to these animals will qualify pending approval of the reasonable accommodation.

Families That Qualify for Both Medical and Disability Assistance Expenses

OHA Policy

This policy applies only to families in which the head, spouse, or cohead is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, OHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

6-II.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)]

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (1) are necessary to enable a family member 18 years or older to work, (2) are not paid to a family member or reimbursed by an outside source, (3) in combination with any medical expenses, exceed three percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work.

Earned Income Limit on the Disability Assistance Expense Deduction

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)].

The disability expense deduction is capped by the amount of “earned income received by family members who are 18 years of age or older and who are able to work” because of the expense [24 CFR 5.611(a)(3)(ii)]. The earned income used for this purpose is the amount verified before any earned income disallowances or income exclusions are applied.

OHA Policy

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, OHA will consider factors such as how the work schedule of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.

When OHA determines that the disability assistance expenses enable more than one family member to work, the disability assistance expenses will be capped by the sum of the family members’ incomes.

Eligible Disability Expenses

Examples of auxiliary apparatus are provided in the *HCV Guidebook* as follows: “Auxiliary apparatus are items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a blind person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work” [HCV GB, p. 5-30].

Eligible Auxiliary Apparatus

OHA Policy

Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost of service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.

Eligible Attendant Care

The family determines the type of attendant care that is appropriate for the person with disabilities.

OHA Policy

Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.

If the care attendant also provides other services to the family, OHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

Payments to Family Members

No disability expenses may be deducted for payments to a member of a tenant family [23 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the tenant family may be deducted if they are not reimbursed by an outside source.

Necessary and Reasonable Expenses

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

OHA Policy

OHA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, OHA will collect information from organizations that provide services and support to persons with disabilities. A family may present, and OHA will consider, the family's justification for costs that exceed typical costs in the area.

Families That Qualify for Both Medical and Disability Assistance Expenses

This policy applies only to families in which the head, spouse, or cohead is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, OHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

6-II.F. CHILD CARE EXPENSE DEDUCTION

HUD defines *child care expenses* at 24 CFR 5.603(b) as “amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.”

Clarifying the Meaning of *Child* for This Deduction

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family’s household [VG, p. 26]. However, child care expenses for foster children that are living in the assisted family’s household, are included when determining the family’s child care expenses [HCV GB, p. 5-29].

Qualifying for the Deduction

Determining Who Is Enabled to Pursue an Eligible Activity

OHA Policy

The family must identify the family member(s) enabled to pursue an eligible activity. The term *eligible activity* in this section means any of the activities that may make the family eligible for a child care deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family’s request, OHA ~~will-may~~ consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work

OHA Policy

If the child care expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member’s efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member’s job search efforts are not commensurate with the child care expense being allowed by OHA.

Furthering Education

OHA Policy

If the child care expense being claimed is to enable a family member to further his or her education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the child care claimed.

Being Gainfully Employed

OHA Policy

If the child care expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that child care is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.

Earned Income Limit on Child Care Expense Deduction

When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for child care – although the care must still be necessary and reasonable. However, when child care enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)].

The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

When the person who is enabled to work is a person who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480 is excluded, child care costs related to enabling a family member to work may not exceed the portion of the person's earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes \$15,000 but because of the EID only \$5,000 is included in annual income, child care expenses are limited to \$5,000.

OHA must not limit the deduction to the least expensive type of child care. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30].

OHA Policy

When the child care expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, OHA generally will limit allowable child care expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

Eligible Child Care Expenses

The type of care to be provided is determined by the tenant family. OHA may not refuse to give a family the child care expense deduction because there is an adult family member in the household that may be available to provide child care [VG, p. 26].

Allowable Child Care Activities

OHA Policy

For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of child care.

The costs of general housekeeping and personal services are not eligible. Likewise, child care expenses paid to a family member who lives in the family's unit are not eligible; however, payments for child care to relatives who do not live in the unit are eligible.

If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, OHA will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

Necessary and Reasonable Costs

Child care expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education, and (2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

OHA Policy

Child care expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.

To establish the reasonableness of child care costs, OHA will use the schedule of child care costs from Alameda County Social Services agency. Families may present, and OHA will consider, justification for costs that exceed typical costs in the area.

6-II.G. PERMISSIVE DEDUCTIONS [24 CFR 5.611(b)(1)]

OHA has opted not to use permissive deductions.

PART III: CALCULATING FAMILY SHARE AND PHA SUBSIDY

6-III.A. OVERVIEW OF RENT AND SUBSIDY CALCULATIONS

~~Under MTW Authority, OHA may adopt and implement reasonable policy for verifying family income and composition and for determining resident eligibility that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. This authorization waives certain provisions of 24 CFR 982.508, 982.503, and 982.518.~~

~~MTW process and procedures may conflict with HUD regulatory requirements. Where no MTW policy or procedure exists, then standard Section 8 rules and regulations apply.~~

TTP Formula [24 CFR 5.628]

HUD regulations specify the formula for calculating the total tenant payment (TTP) for an assisted family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between \$0 and \$50 that is established by [the PHAOHA](#)

OHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

The amount that a family pays for rent and utilities (the family share) will never be less than the family's TTP but may be greater than the TTP depending on the rent charged for the unit the family selects.

OHA Policy

The TTP of families participating in the MTW Rent Reform Pilot will be calculated based on whether they are identified as Senior, Disabled, or Work-Eligible. Senior and Disabled households TTP is calculated as 27.5 percent of the family's gross monthly income and Work-Eligible families TTP is 27 percent of the family's gross monthly income.

Welfare Rent [24 CFR 5.628]

OHA Policy

Welfare rent does not apply in OHA's jurisdiction.

Minimum Rent [24 CFR 5.630]

OHA Policy

The minimum rent for OHA's clients is \$50, except for households participating in the MTW Rent Reform Pilot, in which case the minimum rent is \$25.

Family Share [24 CFR 982.305(a)(5) as amended by MTW]

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds OHA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy OHA may not approve the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. The income used for this determination must have been verified no earlier than 120 days before the family's voucher was issued. (For a discussion of the application of payment standards, see section 6-III.C.)

OHA Subsidy [24 CFR 982.505(b)]

OHA will pay a monthly housing assistance payment (HAP) for a family that is equal to the lower of (1) the applicable payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP. (For a discussion of the application of payment standards, see section 6-III.C.)

Utility Reimbursement ~~MTW~~

OHA is not limited to establishing a utility allowance schedule in accordance with HUD requirements. OHA is authorized to establish a utility allowance policy for the MTW Housing Choice Voucher program that will reduce costs and achieve greater cost effectiveness in Federal expenditures. Policies developed under MTW authority are designed to encourage low income families to lease energy efficient units and conserve and control their energy use.

OHA Policy

In accordance with MTW Activity #15-02, When OHA's subsidy for a family exceeds the rent to owner, OHA will not make a utility reimbursement to the family.

For MTW Rent Reform Hardship, see section 6-III.B.

6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630]

Overview

If OHA establishes a minimum rent greater than zero, OHA must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If OHA determines that a hardship exists, the TTP is the highest of the remaining components of the family's calculated TTP.

HUD-Defined Financial Hardship

Financial hardship includes the following situations:

- (1) The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

OHA Policy

A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent.

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

- (2) The family would be evicted because it is unable to pay the minimum rent.

OHA Policy

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent or tenant-paid utilities.

- (3) Family income has decreased because of changed family circumstances, including the loss of employment.

- (4) A death has occurred in the family.

OHA Policy

In order to qualify under this provision, a family must describe how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member's income).

- (5) The family has experienced other circumstances determined by OHA.

OHA Policy

OHA currently has not established fixed hardship criteria, but will consider each case individually.

MTW Utility Allowance Hardships

- OHA Policy

Under the MTW utility allowance activity, a family's UA is determined by the size of the dwelling unit leased or the voucher unit size for which the family qualifies using OHA subsidy standards, whichever is the lowest of the two:

OHA will provide notification to all households at least six-months prior to implementation of the new UA policy. Households that submit a request and qualify as a hardship case will receive an additional six-month deferment of the new UA policy. All requests for extensions of the hardship period will be reviewed by the Executive Director, or his designee, on a case-by-case basis. The hardship policy applies to cases that meet the following criteria:

- The UA or URP decreased by greater than \$50, and
- Head of household/Co-head/Spouse is elderly or disabled, or
- Household verifies enrollment in a reduced rate utility program (i.e. PG&E CARE).

Implementation of Financial Hardship Exemption

Determination of Hardship

When a family requests a financial hardship exemption, OHA must suspend the minimum rent requirement beginning the first of the month following the family's request.

OHA then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

OHA Policy

OHA defines temporary hardship as a hardship expected to last 90 days or less. Long-term hardship is defined as a hardship expected to last more than 90 days.

When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

Example: Impact of Minimum Rent Exemption	
Assume the PHAOHA has established a minimum rent of \$ <u>3550</u> .	
Family Share – No Hardship	Family Share – With Hardship
\$0 30% of monthly adjusted income	\$0 30% of monthly adjusted income
\$15 10% of monthly gross income	\$15 10% of monthly gross income
N/A Welfare rent	N/A Welfare rent
\$50 Minimum rent	\$50 Minimum rent
Minimum rent applies. TTP = \$50	Hardship exemption granted. TTP = \$15

OHA Policy

To qualify for a hardship exemption for minimum rent, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family's ability to pay the minimum rent.

OHA will make the determination of hardship within 30 calendar days.

No Financial Hardship

If OHA determines there is no financial hardship, OHA will reinstate the minimum rent and require the family to repay the amounts suspended.

OHA Policy

OHA will require the family to repay the suspended amount within 30 calendar days of OHA's notice that a hardship exemption has not been granted.

Temporary Hardship

If OHA determines that a qualifying financial hardship is temporary, OHA must suspend the minimum rent for the 90-day period beginning the first of the month following the date of the family's request for a hardship exemption.

At the end of the 90-day suspension period, the family must resume payment of the minimum rent and must repay OHA the amounts suspended. HUD requires OHA to offer a reasonable repayment agreement, on terms and conditions established by OHA. OHA also may determine that circumstances have changed and the hardship is now a long-term hardship.

OHA Policy

OHA will enter into a repayment agreement in accordance with OHA's repayment agreement policy (see Chapter 16).

Long-Term Hardship

If OHA determines that the financial hardship is long-term, OHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

OHA Policy

The hardship period ends when any of the following circumstances apply:

1. At an interim or next scheduled reexamination, the family's calculated TTP is greater than the minimum rent.
2. For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a \$60/month child support payment, the hardship will continue to exist until the family receives at least \$60/month in income from another source or once again begins to receive the child support.
3. For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

6-III.C. APPLYING PAYMENT STANDARDS [[24 CFR 982.505; 982.503\(b\)](#)]

Overview

OHA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of OHA's payment standards. The establishment and revision of OHA's payment standard schedule are covered in Chapter 16.

Payment standard is defined as "the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)" [[24 CFR 982.4\(b\)](#)].

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under OHA's

subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family.

If OHA establishes an exception payment standard for a designated part of a zip code area or an FMR area and a family's unit is located in the exception area, OHA must use the appropriate payment standard for the exception area.

OHA is required to pay a monthly housing assistance payment (HAP) for a family that is the lower of (1) the payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP.

If during the term of the HAP contract for a family's unit, the owner lowers the rent, OHA will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit [HCV GB, p. 7-8].

~~Under MTW Authority, OHA is authorized to adopt and implement any reasonable policy to establish payments, rents or subsidy levels from tenant-based assistance that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. OHA is authorized to adopt and implement any reasonable policies to calculate the tenant portion of rent that differ from the currently mandated program requirement in the 1937 Act and its implementing regulations. This authorization waives certain provisions of Section 8(o)(1), 8(o)(2), 8(o)(3), 8(o)(10), and 8(o)(13)(H)-(I) of the 1937 Act and 24 CFR 982.508, 982.503 and 982.518, as necessary to implement the Agency's Annual MTW Plan~~

OHA Policy

To increase housing choices for low income families, OHA is not limited to establishing payment standards the within the HUD required basic range of between 90 percent and 110 percent of the published FMR for each that unit size. OHA is authorized to establish payment standards for the MTW Housing Choice Voucher program that reflect current local rental market conditions.

Changes in Payment Standards

When OHA revises its payment standards during the term of the HAP contract for a family's unit, it will apply the new payment standards in accordance with HUD regulations.

Decreases

If OHA changes its payment standard schedule, resulting in a lower payment standard amount, during the term of a HAP contract, OHA is not required to reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect [FR Notice 11/16/16].

However, if OHA does choose to reduce the payment standard for families currently under HAP contract, the initial reduction to the payment standard may not be applied any earlier than the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount. At that point, OHA may either reduce the payment standard to the current amount in effect on OHA's payment standard schedule, or may reduce the payment standard to another amount that is higher than the normally applicable amount on the

schedule. OHA may also establish different policies for designated areas within their jurisdiction (e.g., different zip code areas).

In any case, OHA must provide the family with at least 12 months' notice that the payment standard is being reduced before the effective date of the change. OHA's policy on decreases in the payment standard during the term of the HAP contract apply to all families under HAP contract at the time of the effective date of the decrease in the payment standard within the designated area.

OHA Policy

If OHA changes its payment standard schedule resulting in a lower payment standard amount, during the term of a HAP contract, OHA will not reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect.

OHA will not establish different policies for decreases in the payment standard for designated areas within their jurisdiction.

~~If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard generally will be used beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard. OHA will determine the payment standard for the family as follows:~~

~~**Step 1:** At the first regular reexamination following the decrease in the payment standard, OHA will determine the payment standard for the family using the lower of the payment standard for the family unit size or the size of the dwelling unit rented by the family.~~

~~**Step 2:** OHA will compare the payment standard from step 1 to the payment standard last used to calculate the monthly housing assistance payment for the family. The payment standard used by OHA at the first regular reexamination following the decrease in the payment standard will be the higher of these two payment standards. OHA will advise the family that the application of the lower payment standard will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard.~~

~~**Step 3:** At the second regular reexamination following the decrease in the payment standard, the lower payment standard will be used to calculate the monthly housing assistance payment for the family unless OHA has subsequently increased the payment standard, in which case the payment standard will be determined in accordance with procedures for increases in payment standards described below.~~

Increases

If the payment standard is increased during the term of the HAP contract, the increased payment standard will be used to calculate the monthly housing assistance payment for the family beginning on the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard.

OHA Policy

If an interim is initiated by OHA because of an approved rent increase, the higher payment standard will be applied.

Families requiring or requesting interim reexaminations will not have their HAP payments calculated using the higher payment standard until their next scheduled reexamination [\[HCV GB\]](#).

Changes in Family Unit Size

Irrespective of any increase or decrease in the payment standard, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard for the family beginning at the family's first regular reexamination following the change in family unit size.

Reasonable Accommodation (HOTMA)

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, OHA may approve a higher payment standard for the family of more than 120 percent of the fair market rent with HUD approval.

OHA Policy

If the payment standard amount has *increased* as a result of a reasonable accommodation, the increased payment standard will be applied once all requested documents are received, on the first of the following month of the approval date of the reasonable accommodation. Delays in the interim reexamination process by the family will result in the payment standard increase being applied the first of the following month when all necessary documents have been received.⁷

If the payment standard amount has *decreased* as a result of a reasonable accommodation that is no longer applicable, the *decreased* payment standard will be applied only after the family has received 30 days notice.

6-III.D. APPLYING UTILITY ALLOWANCES [MTW] [24 CFR 982.517] [FR notice 06/25/2014]

Overview

~~An OHA established utility allowance schedule is used in determining family share and OHA subsidy. Under MTW Authority, OHA is authorized to adopt and implement any reasonable policy to establish payments, rents or subsidy levels from tenant-based assistance that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. OHA is authorized to adopt and implement any reasonable policies to calculate the tenant portion of rent that differ from the currently mandated program requirement in the 1937 Act and its implementing regulations. This authorization waives certain provisions of Section 8(o)(1), 8(o)(2), 8(o)(3), 8(o)(10), and 8(o)(13)(H)-(I) of the 1937 Act and 24 CFR 982.508, 982.503 and 982.518, as necessary to implement the Agency's Annual MTW Plan~~

OHA Policy

OHA is not limited to establishing a utility allowance schedule in accordance with HUD requirements. OHA is authorized to establish a utility allowance policy for the MTW

Housing Choice Voucher program that will reduce costs and achieve greater cost effectiveness in Federal expenditures. Policies developed under MTW authority also are designed to encourage low income families to lease energy efficient units and conserve and control their energy consumption.

For policies on establishing the MTW utility allowances, see Chapter 16-II.C.

Reasonable Accommodation

HCV program regulations require OHA to approve a utility allowance amount higher than shown on OHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, OHA will approve an allowance for air-conditioning, even if OHA has determined that an allowance for air-conditioning generally is not needed.

The family must request the higher allowance and provide OHA with an explanation of the need for the reasonable accommodation and information about the amount of additional allowance required [HCV GB, p. 18-8].

Utility Allowance Revisions

At reexamination, OHA may use its current MTW utility allowance schedule. [24 CFR 982.517 (d) (2)]

Revised utility allowances will be applied to a family's rent and subsidy calculations at the ~~first next annual regular~~ reexamination that is effective after the allowance is adopted.

OHA Policy

Unless OHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the ~~first next annual regular~~ reexamination after a new allowance is adopted, up to and including any utility allowance schedule developed under MTW authority.

For families on a biennial/triennial reexamination schedule, revised utility allowances will be applied on the ~~earlier of the first anniversary date or first next regular~~ reexamination date following the adoption of the revised utility allowance schedule.

6-III.E. PRORATED ASSISTANCE FOR MIXED FAMILIES [24 CFR 5.520]

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. OHA must prorate the assistance provided to a mixed family. OHA will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible.

EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

24 CFR 5.609

(a) Annual income means all amounts, monetary or not, which:

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- (3) Which are not specifically excluded in paragraph (c) of this section.
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
- (4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);
- (5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);
- (6) Welfare assistance payments.
 - (i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:
 - (A) Qualify as assistance under the TANF program definition at 45 CFR 260.31¹; and
 - (B) Are not otherwise excluded under paragraph (c) of this section.
 - (ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

¹ Text of 45 CFR 260.31 follows (next page).

- (A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - (B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
- (7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;
 - (8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section)

HHS DEFINITION OF "ASSISTANCE"

45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

260.31 What does the term “assistance” mean?

- (a)(1) The term “assistance” includes cash, payments, vouchers, and other forms of benefits designed to meet a family’s ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).
- (2) It includes such benefits even when they are:
 - (i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and
 - (ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).
- (3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.
- (b) [The definition of “assistance”] excludes: (1) Nonrecurrent, short-term benefits that:
 - (i) Are designed to deal with a specific crisis situation or episode of need;
 - (ii) Are not intended to meet recurrent or ongoing needs; and
 - (iii) Will not extend beyond four months.
- (2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);
- (3) Supportive services such as child care and transportation provided to families who are employed;
- (4) Refundable earned income tax credits;
- (5) Contributions to, and distributions from, Individual Development Accounts;
- (6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and
- (7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

24 CFR 5.609

(c) *Annual income does not include the following:*

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) The full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8) (i) Amounts received under training programs funded by HUD;
(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for ~~the PHAOHA~~ or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of ~~the PHAOHA~~'s governing board. No resident may receive more than one such stipend during the same period of time;
- (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9) Temporary, nonrecurring or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) [Reserved]
- (14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

- (15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
- (16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
- (17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]

Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits

- a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));
- b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);
- c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
- d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
- e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

- f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931);
- g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L-94-540, 90 Stat. 2503-04);
- h) The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);
- i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
- j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f));
- k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
- l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
- m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
- n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j));
- o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);
- p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));
- q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);
- r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and
- s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS

24 CFR 5.603(b) Net Family Assets

- (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.
- (2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

24 CFR 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.

(a) *Applicable programs.* The disallowance of earned income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

(b) *Definitions.* The following definitions apply for purposes of this section.

Baseline income. The annual income immediately prior to implementation of the disallowance described in paragraph (c)(1) of this section of a person with disabilities (who is a member of a qualified family).

Disallowance. Exclusion from annual income.

Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

- (1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;
- (2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or
- (3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance-- provided that the total amount over a six-month period is at least \$500.

(c) *Disallowance of increase in annual income—*

- (1) Initial twelve month exclusion. During the 12-month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income

attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) Second twelve month exclusion and phase-in. Upon expiration of the 12-month period defined in paragraph (c)(1) of this section and for the subsequent 12-month period, the responsible entity must exclude from annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.

(3) Maximum four year disallowance. The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 48 month period starting from the initial exclusion under paragraph (c)(1) of this section.

(d) Inapplicability to admission. The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION

24 CFR 5.615

Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.

(a) Applicability. This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) Definitions. The following definitions apply for purposes of this section:

Covered families. Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

Economic self-sufficiency program. See definition at Sec. 5.603.

Imputed welfare income. The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

Specified welfare benefit reduction.

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

- (i) at expiration of a lifetime or other time limit on the payment of welfare benefits;
- (ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or
- (iii) because a family member has not complied with other welfare agency requirements.

(c) Imputed welfare income.

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to ~~the PHAOHA~~ by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of ~~the PHAOHA~~, the welfare agency will inform ~~the PHAOHA~~ in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform ~~the PHAOHA~~ of any subsequent changes in the term or amount of such specified welfare benefit reduction. ~~The PHAOHA~~ will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at ~~the PHAOHA~~'s interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to ~~the PHAOHA~~ by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) ~~The PHAOHA~~ may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) Review of PHA decision.

(1) Public housing. If a public housing tenant claims that ~~the PHAOHA~~ has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if ~~the PHAOHA~~ denies the family's request to modify such amount, ~~the PHAOHA~~ shall give the tenant written notice of such denial, with a brief explanation of the basis for ~~the PHAOHA~~ determination of the amount of imputed welfare income. ~~The PHAOHA~~ notice shall also state that if the tenant does not agree with ~~the PHAOHA~~ determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review ~~the PHAOHA~~ determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on ~~the PHAOHA~~ determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review ~~the PHAOHA~~ determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if ~~the PHAOHA~~ denies the family's request to modify such amount, ~~the PHAOHA~~ shall give the family written notice of such denial, with a brief explanation of the basis for ~~the PHAOHA~~ determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with ~~the PHAOHA~~ determination, the family may request an informal hearing on the determination under ~~the PHAOHA~~ hearing procedure.

(e) PHA relation with welfare agency.

(1) ~~The PHAOHA~~ must ask welfare agencies to inform ~~the PHAOHA~~ of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives ~~the PHAOHA~~ written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) ~~The PHAOHA~~ is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to ~~the PHAOHA~~. However, ~~the PHAOHA~~ is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. ~~The PHAOHA~~ shall be entitled to rely on the welfare agency notice to ~~the PHAOHA~~ of the welfare agency's determination of a specified welfare benefits reduction.

Chapter 7

VERIFICATION

[[24 CFR 982.516](#), [24 CFR 982.551](#), [24 CFR 5.230](#), Notice PIH 2018-18, PIH 2018-24]

INTRODUCTION

PQHAs must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain the family's consent to collect the information. Applicants and tenants must cooperate with the verification process as a condition of receiving assistance. OHA must not pass on the cost of verification to the family.

PQHAs must follow the verification guidance ("VG") provided by HUD in Notice PIH 201[078-1298](#) and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary OHA policies.

Part I describes the general verification process. More detailed requirements related to individual factors are provided in subsequent parts including family information (Part II), income and assets (Part III), and mandatory deductions (Part IV).

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies established by OHA.

Under MTW Authority, OHA may adopt and implement reasonable policy for verifying family income and composition and for determining resident eligibility that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. This authorization waives certain provisions of 24 CFR 982.516 and 982 Subpart E, as necessary to implement the Agency's Annual MTW Plan.

MTW process and procedures may conflict with HUD regulatory requirements. Where no MTW policy or procedure exists, then standard Section 8 rules and regulations apply.

PART I: GENERAL VERIFICATION REQUIREMENTS

7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION

[[24 CFR 982.516 AND-and 982.551, 24 CFR 5.230](#)]]

The family must supply any information that OHA or HUD determines is necessary to the administration of the program and must consent to OHA verification of that information [[24 CFR 982.551](#)].

Consent Forms

It is required that all adult applicants and tenants sign [OHA Authorization Release Form/Privacy Act Notice form HUD-9886, Authorization for Release of Information and OHA 290103, Authorization Release Form](#). The purpose of [this](#) form [HUD-9886](#) is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and OHA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

OHA Policy (pending HUD approval)

[In accordance with MTW Activity #14-01](#), OHA may require each adult family member, and the head of household, spouse, or co-head, regardless of age, to sign the HUD approved OHA Authorization Release Form/Privacy Act Notice form in lieu of the form [HUD-9886, Authorization for the Release of Information/Privacy Act Notice](#), and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

Penalties for Failing to Consent [[24 CFR 5.232](#)]

If any family member who is required to sign a consent form fails to do so, OHA will deny admission to applicants and terminate the assistance of participants. The family may request an informal review (applicants) or informal hearing (participants) in accordance with OHA procedures.

7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

HUD's Verification Hierarchy [Notice PIH 2018-18](#)

HUD [mandates the use of the EIV system and offers administrative guidance on the use of other methods authorizes OHA to use six methods](#) to verify family information and specifies the circumstances in which each method will be used. In general HUD requires OHA to use the

most reliable form of verification that is available and to document the reasons when OHA uses a lesser form of verification.

In order of priority, the forms of verification that OHA will use are:

1. Up-front Income Verification (UIV) using EIV whenever available
2. UIV using non-HUD system
3. Third-party Written Verification (May be provided by applicant or participant)
4. Written Third-p-Party Verification Form
5. Oral Third Party Verification

6. Review of Documents

7.6. Self-Certification Tenant-Declaration

Each of the verification methods is discussed in subsequent sections below.

Requirements for Acceptable Documents

OHA Policy

Any documents used for verification must be the original (not photocopies) and generally must be dated within 120 calendar days of the date they are provided to OHA request. The documents must not be damaged, altered or in any way illegible.

OHA will accept documents dated up to 6 months before the effective date of the family's reexamination if the document represents the most recent scheduled report from a source. For example, if the holder of a pension annuity provides semi-annual reports, OHA would accept the most recent report.

Print-outs from web pages are considered original documents.

Any family self-certifications must be made in a format acceptable to OHA and must be signed in the presence of an OHA representative.

E-File or File Documentation

OHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that OHA has followed all of the verification policies set forth in this Plan. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

OHA will document, in the family file, the following:

- Reported family annual income
- Value of assets
- Expenses related to deductions from annual income

- Other factors influencing adjusted income, including disputes

When OHA is unable to obtain third-party verification, it will document in the family file the reason that third-party verification was not available [24 CFR 982.516(a)(2); Notice PIH 2018-182].

7-I.C. UP-FRONT INCOME VERIFICATION (UIV)

Up-front income verification (UIV) refers to ~~Oa-P~~HA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to OHA.

OHA restricts access to and safeguards UIV data in accordance with HUD guidance on security procedures, as issued and made available by HUD.

There may be legitimate differences between the information provided by the family and UIV-generated information. No adverse action can be taken against a family until OHA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through OHA's informal review/hearing processes.

Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory)

OHA must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income in accordance with 24 CFR 5.236 and administrative guidance issued by HUD. HUD's The EIV system contains data showing earned income, unemployment benefits, Social Security and SSI benefits for participant families. HUD requires PHAs to use the EIV system when available. The following policies will apply when OHA has access to HUD's EIV system.

~~The EIV system contains two main components: tenant income data (TID) reports and “exceeds threshold” reports (ETR).~~

EIV Income Reports

The data shown on TID-income reports is updated quarterlyregularly. Data may be between 3 and 6 months old at the time reports are generated.

OHA Policy

OHA will obtain income reports for reexaminations on a regular basis. Reports will be generated as part of the regular reexamination process.

Income reports will be compared to family-provided information as part of the reexamination process. Income reports may be used in the calculation of annual income, as described in Chapter 6.I.C. Income reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between income reports TID reports and family-provided information will be resolved as described in Chapter 6.I.C. and in this chapter.

Income reports will be used in ~~interim~~-reexaminations to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to verify earned income and to verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources.

Income reports will be retained in participant files with the applicable ~~annual or interim~~ reexamination documents.

When OHA determines through Income reports and third party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

EIV Discrepancy Reports

~~The EIV system verifies tenant identities against SSA records. These records are compared to PIC data for a match on social security number, name, and date of birth.~~

~~OHA is required to use EIV's Identity Verification Report on a monthly basis to improve the availability of income information in EIV [Notice PIH 2012-10].~~

~~When identity verification for a participant fails, a message will be displayed within the EIV system and no income information will be displayed. The Income Verification Tool (IVT) report facilitates identification of tenant unreported and underreported income and is updated monthly. It will be used to compare tenant reported income with that previously reported on the HUD-50058 to identify discrepancies during interim and regular reexaminations. discrepancy report is a tool for identifying families who may have concealed or under reported income. Data in the discrepancy report represents income for past reporting periods and may be between 6 months and 30 months old at the time reports are generated.~~

~~Families who have not concealed or under reported income may appear on the discrepancy report in some circumstances, such as loss of a job or addition of new family members.~~

OHA Policy

~~OHA will generate and review discrepancy report on a monthly basis. The ETR threshold percentage will be adjusted as necessary based on the findings in the ETRs.~~

In reviewing the ~~discrepancy IVT~~ report, OHA will ~~begin with the largest~~ review and attempt to resolve discrepancies.

~~When OHA determines that a participant appearing on the Income Discrepancy Report has not concealed or under reported income, the participant's name will be placed on a list of "false positive" reviews. To avoid multiple reviews in this situation, participants appearing on this list will be eliminated from discrepancy processing until a subsequent interim or annual reexamination has been completed.~~

~~The POHA will review the EIV discrepancy~~review the IVT report tab during processing of annual and interim reexaminations. When it appears that a family may have concealed

or under-reported income, OHA will request third-party written verification of the income in question.

When OHA determines through file review and third party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

EIV Identity Verification

The EIV system verifies tenant identities against SSA records. These records are compared to PIC data for a match on Social Security number, name, and date of birth.

PHAs are

OHA is required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [[Notice PIH 2018-318](#)].

When identity verification for a participant fails, a message will be displayed within the EIV system and no income information will be displayed.

OHA Policy

OHA will identify participants whose identity verification has failed by reviewing EIV's Identity Verification Report on a monthly basis and as part of the annual reexamination process.

OHA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the participant~~reviewing file documents~~. When OHA determines that discrepancies exist due to OHA errors such as spelling errors or incorrect birth dates, the errors will be corrected.

7-I.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION

Reasonable Effort and Timing (amended by MTW)

~~Under MTW Authority, OHA may adopt and implement reasonable policy for verifying family income and composition and for determining resident eligibility that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. This authorization waives certain provisions of 24 CFR 982.516 and 982 Subpart E, as necessary to implement the Agency's Annual MTW Plan.~~

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to the PHA by the family. If written third-party verification is not available, the PHA must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

Written Third-Party Verification

Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to: pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

OHA is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.

OHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible.

OHA Policy

Third-party documents provided by the family must be dated within 60 days of ~~Othe~~ PHA request date.

If OHA determines that third-party documents provided by the family are not acceptable, ~~the PHAit~~ will explain the reason to the family and request additional documentation.

As verification of earned income, OHA will require the family to provide the two most current, consecutive pay stubs.

Written Third-Party Verification Form

When upfront verification is not available and the family is unable to provide written third-party documents, OHA must request a written third-party verification form. HUD's position is that this traditional third-party verification method presents administrative burdens and risks which may be reduced through the use of family-provided third-party documents. HUD requires OHA to rely on documents that originate from a third party sources' computerized system and/or database, as this process reduces the likelihood of incorrect or falsified information being provided on third party verification request form.

OHA may mail, fax, or e-mail third-party written verification form requests to third-party sources.

OHA Policy

OHA will send third-party verification forms directly to the third party.

Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by OHA.

~~OHA will make a minimum of one attempt, which may be oral, to obtain third party verification. A record of each attempt to contact the third party source (including no answer calls) and all contacts with the source will be documented in the file. Third party verification will be requested only once and if it is not returned within 10 business days, OHA will use document review.~~

~~OHA may mail, fax, e-mail, or hand deliver third party written verification requests and will accept third party responses using any of these methods. OHA will send a written request for verification to each required source within 10 business days of securing a family's authorization for the release of the information and give the source 10 business days to respond in writing.~~

Oral Third-Party Verification [[Notice PIH 20180-189](#)]

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Oral third-party verification is mandatory if neither form of written third-party verification is available.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

~~PO~~HAs should document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

OHA Policy

In collecting third-party oral verification, PHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

When any source responds verbally to the initial written request for verification ~~the~~ ~~PO~~HA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

When Third-Party Information is Late

When third-party verification has been requested and the timeframes for submission have been exceeded, OHA will use the information from documents on a provisional basis. If OHA later receives third-party verification that differs from the amounts used in income and rent determinations and it is past the deadline for processing the reexamination, OHA will conduct an interim reexamination to adjust the figures used for the reexamination, regardless of OHA's interim reexamination policy.

When Third-Party Verification is Not Required

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

OHA Policy

If the family cannot provide original documents, OHA will accept a self-certificationtenant-declaration will be acceptable as the only means of verification or online documentation. The cost of verification will not be passed on to the family. If the family cannot provide original documents, self certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.
The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [HCV GB, p. 18].

Primary Documents

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

Imputed Assets

OHA may accept a self-certification from the family as verification of assets disposed of for less than fair market value. [HCV GB, p. 5-28].

OHA Policy

OHA will accept a self-certificationtenant-declaration from a family as verification of assets disposed of for less than fair market value.

Value of Assets and Asset Income [24 CFR 982.516(a)]

For families with net assets totaling \$5,000 or less, ~~the~~ OHA may accept the family's declaration of asset value and anticipated asset income. However, the OHA is required to obtain third-party verification of all assets regardless of the amount during the intake process and at least every three years thereafter. If third party verification is not available OHA must document in the file why it was not available.

OHA Policy

~~For families with net assets totaling \$5,000 or less, OHA will accept the family's self-certification of the value of family assets and anticipated asset income when applicable. OHA will require all families to provide verification of the value of assets and asset income in all cases. The family's declaration must show each asset and the amount of income expected from that asset. All family members 18 years of age and older must sign the family's declaration.~~

OHA will use third-party documentation for assets as part of the intake process, whenever a family member is added to verify the individual's assets, and every three years thereafter.

~~OHA may determine that third party verification is not available if the asset or expense involves an insignificant amount, making it not cost effective or reasonable to obtain third party verification [VG, p. 15].~~

~~OHA will use review of documents in lieu of requesting third party verification when the market value of an individual asset or an expense is \$50,000 annually and the family has original documents that support the declared amount.~~

Certain Income, Asset and Expense Sources

~~OHA will determine that third party verification is not available when it is known that an income source does not have the ability to provide written or oral third party verification [VG, p. 15]. For example, OHA will rely upon review of documents when OHA determines that a third party's privacy rules prohibit the source from disclosing information.~~

OHA Policy

~~OHA will determine that third party verification is not available when there is a service charge for verifying an asset or expense and the family has original documents that provide the necessary information.~~

~~If the family cannot provide original documents, OHA will accept a self certification will be acceptable as the only means of verification or on line documentation. The cost of verification will not be passed on to the family.~~

7.I.E. REVIEW OF DOCUMENTS

Using Review of Documents as Verification

OHA Policy

~~In the event that Up front income, third party written or oral verification is unavailable, or the information has not been verified by the third party within 10 business days, the Authority will annotate the file accordingly and utilize documents provided by the family as the primary source if the documents provide complete information.~~

~~OHA may also review documents when necessary to help clarify information provided by third parties. In such cases the file will be documented to show how OHA arrived at a final conclusion about the income or expense to include in its calculations.~~

~~The Authority will accept verifications in the form of computerized printouts delivered by the family from the following agencies:~~

- ~~■ Social Security Administration~~
- ~~■ Veterans Administration~~
- ~~■ Temporary Assistance to Needy Families (TANF) award letter—Department of SSA~~
- ~~■ Unemployment Compensation Board~~
- ~~■ City or County Courts~~

~~All such documents, excluding government checks, will be photocopied and retained in the applicant file. In cases where documents are viewed which cannot be photocopied, staff viewing the document(s) will complete a Third Party Verbal Update form or document.~~

~~The Authority will accept the following documents from the family provided that the document is such that tampering would be easily noted:~~

- ~~Consecutive and original wage stubs~~
- ~~Bank statements~~
- ~~Pension benefit statements letters~~
- ~~Other documents noted in this Chapter as acceptable verification~~

~~The Authority will accept faxed documents and photocopies unless the original documents have been requested.~~

~~If third party verification is received after documents have been accepted as provisional verification, and there is a discrepancy, the Authority will utilize the third party verification.~~

7-I.F. SELF-CERTIFICATION Tenant-Declaration

When HUD requires third-party verification, self-certification, or “tenant declaration,” is used as a last resort when the PHAOHA is unable to obtain third-party verification. The tenant submits an affidavit or notarized statement of reported income and/or expenses to OHA.

Self-certification, however, is an acceptable form of verification when:

- A source of income is fully excluded
- Net family assets total \$5,000 or less and the PQHA has adopted a policy to accept self-certification at annual recertification, when applicable
- The PQHA has adopted a policy to implement streamlined annual recertifications for fixed sources of income (See Chapter 11)

When the PQHA was required to obtain third-party verification but instead relies on a tenant declaration for verification of income, assets, or expenses, the family’s file must be documented to explain why third-party verification was not available.

OHA Policy

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to OHA.

OHA may require a family to certify that a family member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to OHA and must be signed by the family member whose information or status is being verified. All self-certifications must be signed in the presence of an OHA representative.

PART II: VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

OHA Policy

OHA will require families to furnish verification of legal identity for each household member.

<u>Primary Verification Documents</u>	
Verification of Legal Identity for Adults	Verification of Legal Identity for Children
1. Current, valid driver's license or California identification card or 2. <u>Current</u> U.S. passport or 3. U.S. Military Identification Cards or 4. Permanent Residence ID	1. Certificate of birth or 2. Permanent Residence ID or 3. Adoption papers or 4. Custody agreement or 5. Health and Human Services ID or 6. <u>Certified Ss</u> chool records

If none of the primary documents are available for to establish legal identity for adults OHA will require any two of these documents:

- Original copy of a certificate of birth
- Alien Registration Receipt Card (Form I-155)
- Temporary Resident Card (Form I-688)
- Arrival-Departure Record (Form I-94)
- Consulate or city issued identification cards
- Church issued baptismal certificate
- U.S. military discharge (DD 214)
- Voter's registration card
- Company/agency identifications cards

If a document submitted by a family is illegible for any reason or otherwise questionable, more than one of these documents may be required.

If none of ~~these~~the primary documents can be provided to establish legal identity of adults, then OHA may require two forms of alternative documentation to verify identity as specified in the Department's approved alternative documentation. ~~the case would be forward to the Department Director who will make the determination based on regulations.~~

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where OHA has reason to doubt the identity of a person representing him or herself to be a participant ~~on an as needed basis.~~

At the time of admission if ~~you~~the applicant ~~are-is~~ unable to provide one of the documents required in the primary group or two documents on the~~and~~alternative documents list ~~first group~~, legal identity will have to be verified through the use of fingerprinting.

7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and Notice PIH 20182-4240 (HA as amended by MTW)]

The family must provide documentation of a valid social security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status and are part of a mixed household where at least one member has eligible US citizenship or immigration status. Exemptions also include, existing program participants who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

Note that an individual who previously declared to have eligible immigration status may not change his or her declaration for the purpose of avoiding compliance with the SSN disclosure and documentation requirements or penalties associated with noncompliance with these requirements. Nor may the head of household opt to remove a household member from the family composition for this purpose.

~~The~~POHA must accept the following documentation as acceptable evidence of the social security number:

1. An original SSN card issued by the Social Security Administration (SSA)
2. An original SSA-issued document, which contains the name and SSN of the individual
3. An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual, along with other identifying information of the individual
~~Such other evidence of the SSN as HUD may prescribe in administrative instructions~~

~~The~~POHA may only reject documentation of an SSN provided by an applicant or participant if the document is not an original document, if the original document has been altered, mutilated, or is not legible, or if the document appears to be forged.

OHA Policy

~~The~~POHA will explain to the applicant or participant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to ~~the~~POHA within 90 days.

In the case of Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals, applicants may be admitted to the program without providing the requested documentation, however, the required documentation must be provided within 90 calendar days from the date of admission into the program. The P OHA must-may grant one additional 90-day extension if it determines that the applicant's failure to comply was due to circumstances that were beyond the applicant's control and could not have been reasonably foreseen. If upon the expiration of the provided time period, the individual fails to comply with the SSN disclosure and documentation requirements, OHA must terminate the individual's assistance.

If an applicant family includes a child under 6-six years of age who joined the household within the 6-six months prior to the date of voucher issuance, an otherwise eligible family may be admitted to the program and the family must provide documentation of the child's SSN within 90 days of the effective date of the initial HAP contract. A 90-day extension will be granted if the POHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control.

OHA Policy

The POHA will grant one additional 90-day extension if needed for reasons beyond the participant's applicant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency. If the individual fails to comply with SSN disclosure and documentation requirements upon expiration of the provided time period, the PHA will terminate the individual's assistance.

When the participant requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the participant must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. The P OHA may not add the new household member until such documentation is provided.

When a participant requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the participant must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period the PHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household. The child will have an ALT ID generated during this time. Upon the expiration of the time period provided, if the family has not complied with the SSN disclosure and documentation requirements, OHA must terminate the entire family's assistance.

If the family submits falsified SSN documentation, OHA must terminate assistance.

OHA is required to retain the EIV Summary Report or Income Report in each family file as confirmation of compliance with the SSN disclosure, documentation and verification requirements. Electronic retention is permissible.

OHA Policy

The POHA will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

Social security numbers must be verified only once during continuously-assisted occupancy.

OHA Policy

~~The P~~OHA will verify each disclosed SSN by:

Obtaining documentation from applicants and participants that is acceptable as evidence of social security numbers

Making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder.

Once the individual's verification status is classified as "verified," ~~the P~~OHA may, at its discretion, should remove and destroy copies of documentation accepted as evidence of social security numbers. The retention of EIV reports is adequate documentation of an individual's SSN by no later than the next reexamination.

OHA Policy

Once an individual's status is classified as "verified" in HUD's EIV system, ~~the P~~OHA will remove and destroy copies of documentation accepted as evidence of social security numbers ~~by no later than the next reexamination.~~

7-II.C. DOCUMENTATION OF AGE

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

OHA Policy

If an official record of birth or evidence of social security retirement benefits cannot be provided, OHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification. Refer to self-certification procedures.
Age must be verified only once during continuously-assisted occupancy.

7-II.D. FAMILY RELATIONSHIPS

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

OHA Policy

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

Marriage or Registered Domestic Partnership

OHA Policy

Certification by the head of household is normally sufficient verification. If OHA has reasonable doubts about a marital relationship or registered domestic partnership status, ~~the PO~~OHA will require the family to document the marriage~~relationship~~.

A marriage certificate generally is required to verify that a couple is married.

~~In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).~~

Separation or Divorce

OHA Policy

Certification by the head of household is normally sufficient verification. If OHA has reasonable doubts about a separation or divorce, ~~the PHA-it~~ will require the family to document the divorce, or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

If no court document is available, documentation from a community-based agency will be accepted.

Absence of Adult Member

OHA Policy

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

Foster Children and Foster Adults

OHA Policy

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

7-II.E. VERIFICATION OF STUDENT STATUS

General Requirements

OHA Policy

OHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

- The family reports full-time student status for an adult other than the head, spouse, or cohead.
- The family reports child care expenses to enable a family member to further his or her education.
- The family includes a student enrolled in an *institution of higher education*.

Valid documentation of student status includes school transcripts demonstrating completion of full-time student status for the previous semester(s) and the continued enrollment in an approved program.

Restrictions on Assistance to Students Enrolled in Institutions of Higher Education

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

OHA Policy

In accordance with the verification hierarchy described in Section 7-1.B, OHA will determine whether the student is exempt from the restrictions in [24 CFR 5.612](#) by verifying any one of the following exemption criteria:

- The student is enrolled at an educational institution that does not meet the definition of *institution of higher education* in the Higher Education Act of 1965 (see Section Exhibit 3-2).
- The student is at least 24 years old.
- The student is a veteran, as defined in Section 3-II.E.
- The student is married.
- The student has at least one dependent child, as defined in Section 3-II.E.

If OHA cannot verify at least one of these exemption criteria, OHA will conclude that the student is subject to the restrictions on assistance at [24 CFR 5.612](#). In addition to verifying the student's income eligibility, OHA will then proceed to verify either the student's parents' income eligibility (see Section 7-III.J) or the student's independence from his/her parents (see below).

| Independent Student

OHA Policy

OHA will verify a student's independence from his/her parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:

- Either reviewing and verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of *independent student* (see Section 3-II.E)
- Reviewing the student's prior year income tax returns to verify the student is independent or verifying the student meets the U.S. Department of

Education's definition of *independent student* (see section 3-II.E.) whether a parent has claimed the student as a dependent

- Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is \$0, except in cases in which OHA determines that the student is a *vulnerable youth* (see section 3-II.E.).

7-II.F. DOCUMENTATION OF DISABILITY

OHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. OHA is not permitted to inquire about the nature or extent of a person's disability [[24 CFR 100.202\(c\)](#)]. OHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If OHA receives a verification document that provides such information, OHA will not place this information in the tenant file. Under no circumstances will OHA request a resident's participant's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at <http://www.hhs.gov/ocr/privacy/>.

The above-cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

Family Members Receiving SSA Disability Benefits

Verification of receipt of disability benefits from the Social Security Administration (SSA) is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions [VG, p. 23].

OHA Policy

For family members claiming disability who receive SSI or other disability payments from the SSA, OHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system when it is available, or HUD's Tenant Assessment Subsystem (TASS). If documentation from HUD's EIV System or TASS is not available, OHA will request a current (dated within the last 120-60 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), OHA will ask the family or assist the family in requesting a benefit verification letter-by either calling SSA at 1-800-772-1213, or by requesting it from www.socialsecuritysa.gov. Once the applicant or resident receives the

benefit verification letter they will be required to provide it to OHA [for copying and the original will be returned to the individual.](#)

Family Members Not Receiving SSA Disability Benefits

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in [24 CFR 5.603](#), ~~necessary to qualify for waiting list preferences or certain income disallowances and deductions~~.

OHA Policy

For family members claiming disability who do not receive SSI or other disability payments from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [[24 CFR 5.508](#)]

Overview

Housing assistance is ~~not available to persons who are not families that include at least one member who is a citizen, national, or eligible immigrant.~~ Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. See the Eligibility chapter for detailed discussion of eligibility requirements. This chapter (7) discusses HUD and OHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy [[24 CFR 5.508\(g\)\(5\)](#)].

U.S. Citizens and Nationals

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

OHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

OHA Policy

Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless OHA receives information indicating that an individual's declaration may not be accurate.

Eligible Immigrants *Documents Required*

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-2 at the end of this chapter summarizes documents family members must provide.

OHA Verification [HCV GB, pp 5-3 and 5-7]

For family members under the age of 62 who claim to be eligible immigrants, OHA must verify immigration status with the U.S. Citizenship and Immigration Services (USCIS).

For family members who are 62 or older are eligible immigrants. No further verification of eligible immigration status is required. Proof of age is required in manner described in 7-II.C.

OHA will follow all USCIS protocols for verification of eligible immigration status.

7-II.H. VERIFICATION OF PREFERENCE STATUS

OHA must verify any preferences claimed by an applicant that determined his/her placement on the waiting list.

7-II.I. VERIFICATION OF STATE LIFETIME SEX OFFENDER REGISTRATION

[Notice: PIH 2012-28]

OHA Policy

Annual reexamination documents will include a question asking whether the participant or any member of the participant's household is subject to a lifetime sex offender registration program in any state.

OHA will verify sex offender information using the Dru Sjodin National Sex Offender Database or other national databases; and document this information in the same method used at admission.

For any admissions after June 25, 2001 (the effective date of the Screening and Eviction for Drug Abuse and Other Criminal Activity final rule), if the reexamination screening reveals that the participant or a member of the participant's household is subject to a lifetime sex offender registration requirement, or that the participant has falsified information or otherwise failed to disclose his or her criminal history on their reexamination forms, the OHA will pursue termination of tenancy to the extent allowed by their lease and state or local law.

OHA Policy

Notwithstanding the above, if the participant or member of the participant's household, regardless of when they were admitted, commits criminal activity while living in

federally assisted housing, OHA will pursue eviction or termination of tenancy to the extent allowed by their lease and state or local law.

PART III: VERIFYING INCOME AND ASSETS

Chapter 6, Part I of this Plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides OHA policies that supplement the general verification procedures specified in Part I of this chapter.

7-III.A. EARNED INCOME

Tips

OHA Policy

Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

Wages

OHA Policy

For wages other than tips, the family must provide originals of the two most current, consecutive pay stubs.

7-III.B. BUSINESS AND SELF-EMPLOYMENT INCOME

OHA Policy

Business owners and self-employed persons will be required to provide:

An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.

All schedules completed for filing federal and local taxes in the preceding year.

If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

OHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination OHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, OHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months OHA

will require the family to provide documentation of income and expenses for this period and use that information to project income.

7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 11.

Social Security/SSI Benefits

OHA Policy

To verify the SS/SSI benefits of applicants, OHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), OHA will help the applicant request a benefit verification letter from SSA's Web site at www.socialsecuritya.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once the applicant has received the benefit verification letter they will be required to provide it to OHA, a copy will be made and the original returned to the individual..

To verify the SS/SSI benefits of ~~resident participants~~, OHA will obtain information about social security/SSI benefits through ~~t~~The HUD EIV System, and confirm with the participant(s) that the current listed benefit amount is correct. If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, OHA will request a current SSA benefit verification letter from each family member that receives social security benefits. or the Tenant Assessment Subsystem (TASS).

~~If benefit information is not available in HUD systems, OHA will assist the family in requesting benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from www.ssa.gov.~~

If the family is unable to provide the document(s) OHA will help the participant request a benefit verification letter from SSA's web site at www.socialsecuritya.gov or ask the family to request a benefit verification letter one by ~~either~~ calling SSA at 1-800-772-1213, or by requesting it from www.socialsecuritya.gov. Once the participant has received the benefit verification letter they will be required to provide it to OHA.

7-III.D. ALIMONY OR CHILD SUPPORT

OHA Policy

The way OHA will seek verification for alimony and child support differs depending on whether the family declares that it receives regular payments.

If the family declares that it *receives regular payments*, verification will be sought in the following order.

If payments are made through a state or local entity, OHA will request a record of payments for the past 12 months and request that the entity disclose any known information about the likelihood of future payments.

Third-party verification from the person paying the support

Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules

Copy of the latest check and/or payment stubs

Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received.

If the family declares that it *receives irregular or no payments*, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts

If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

Note: Families are not required to undertake independent enforcement action.

7-III.E. ASSETS AND INCOME FROM ASSETS

Assets Disposed of for Less than Fair Market Value

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. OHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

OHA Policy

Using available and verifiable resources, OHA will verify, through the Director or designee, the value of assets disposed of only if:

OHA does not already have a reasonable estimation of its value from previously collected information, or

The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a \$10,000 certificate of deposit at the last annual reexamination and ~~the PQA~~ verified this amount. Now the person reports that she has given this \$10,000 to her son. ~~The PQA~~ has a reasonable estimate of the value of the asset; therefore, re-verification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately 5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, ~~the PQA~~ will verify the value of this asset.

7-III.F. NET INCOME FROM RENTAL PROPERTY

OHA Policy

The family must provide:

- A current executed lease for the property that shows the rental amount or certification from the current tenant
- A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, OHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

7-III.G. RETIREMENT ACCOUNTS

OHA Policy

Families will be required to report retirement accounts. OHA will accept written third-party documents supplied by the family as evidence of the status of retirement accounts. When third party verification is not available The type of original document that will be accepted depends upon the family member's retirement status.

Before retirement, OHA will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

Upon retirement, OHA will accept an original document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.

After retirement, OHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

7-III.H. INCOME FROM EXCLUDED SOURCES

A detailed discussion of excluded income is provided in Chapter 6, Part I.

HUD guidance on verification of excluded income draws a distinction between income which is fully excluded and income which is only partially excluded.

For fully excluded income, OHA is not required to follow the verification hierarchy, document why third-party verification is not available, or report the income on the 50058. Fully excluded income is defined as income that is entirely excluded from the annual income determination (for example, food stamps, earned income of a minor, or foster care funds) [Notice PIH 2013-04].

OHA may accept a family's signed application or reexamination form as self-certification of fully excluded income. They do not have to require additional documentation. However, if there is any doubt that a source of income qualifies for full exclusion, OHA has the option of requiring additional verification.

For partially excluded income, OHA is required to follow the verification hierarchy and all applicable regulations, and to report the income on the 50058. Partially excluded income is defined as income where only a certain portion of what is reported by the family qualifies to be excluded and the remainder is included in annual income (for example, the income of an adult full-time student, or income excluded under the earned income disallowance). The PHA must obtain verification for income exclusions only if, without verification, the PHA would not be able to determine whether the income is to be excluded. For example: If a family's 16 year old has a job at a fast food restaurant, the PHA will confirm that PHA records verify the child's age but will not send a verification request to the restaurant. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

OHA Policy

OHA will accept the family's self-certification/tenant-declaration as verification of fully excluded income. OHA may request additional documentation if necessary to document the income source.

OHA will verify the source and amount of partially excluded income as described in Part 1 of this chapter.

OHA will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family share (as is the case with the earned income disallowance). In all other cases, OHA will report the amount to be excluded as indicated on documents provided by the family.

7-III.I. ZERO ANNUAL INCOME STATUS

OHA Policy

Families claiming to have no annual income will be required to execute verification forms to determine that certain forms of income such as unemployment benefits, TANF, SSI, etc. are not being received by the household. The families on zero income status will be evaluated every 90-120 days.

OHA will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, and earnings are not being received by families claiming to have zero annual income.

7-III.J. STUDENT FINANCIAL ASSISTANCE

Any financial assistance, in excess of amounts received for tuition, that a person attending an institution of higher education receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children or is residing with parents who are seeking or receiving HCV assistance [[24 CFR 5.609\(b\)\(9\)](#)] and FR 4/10/06, PIH 2015-21].

For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student financial assistance is excluded from annual income [[24 CFR 5.609\(c\)\(6\)](#)]. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education (as defined in Exhibit 3-2). Excluded amounts are verified only if, without verification, the PHA

would not be able to determine whether or to what extent the income is to be excluded (see Section 7-III.H).

OHA Policy

For a student subject to having a portion of his/her student financial assistance included in annual income in accordance with [24 CFR 5.609\(b\)\(9\)](#), OHA will request third-party written verification of both the source and the amount. [Family-provided documents](#) from the educational institution attended by the student as well as from any other person or entity providing such assistance, as reported by the student.

In addition, OHA will request written verification from the institution of higher education regarding the student's tuition and required fees charged by the school to determine income.

If OHA is unable to obtain third-party written verification of the requested information, [the PHA](#) will pursue other forms of verification following the verification hierarchy in Section 7-I.B.

7-III.K. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, and does not have a dependent child, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents [or a vulnerable youth](#) in accordance with PHA policy [[24 CFR 5.612](#), [and FR 4/10/06, p. 18146, and FR Notice 9/21/16](#)].

This provision does not apply to students residing with parents who are seeking or receiving HCV assistance. It is limited to students who are seeking or receiving assistance on their own, separately from their parents.

OHA Policy

If OHA is required to determine the income eligibility of a student's parents, OHA will request an income declaration and certification of income from the appropriate parent(s) (as determined in Section 3-II.E). The PHA will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to OHA. The required information must be submitted (postmarked) within 10 business days of the date of OHA's request or within any extended timeframe approved by OHA.

OHA reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

PART IV: VERIFYING MANDATORY DEDUCTIONS

7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS

The dependent and elderly/disabled family deductions require only that OHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

Dependent Deduction

See Chapter 6 (6-II.B.) for a full discussion of this deduction. OHA will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse or cohead of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

Elderly/Disabled Family Deduction

See the Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. OHA will verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

7-IV.B. MEDICAL EXPENSE DEDUCTION

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

OHA Policy

OHA will provide a third-party verification form directly to the medical provider requesting the needed information.

Medical expenses will be verified through:

Written Third-party verification form signed by the provider, when possible
If third-party is not possible, copies of cancelled checks used to make medical expense payments and/or printouts or receipts from the source will be used. In this case OHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. OHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months

In addition, OHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

Eligible Household

The medical expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62 or a person with disabilities. OHA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter, and as described in Chapter 7 (7-IV.A) of this plan.

Qualified Expenses

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for OHA's policy on what counts as a medical expense.

Unreimbursed Expenses

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

OHA Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

Expenses Incurred in Past Years

OHA Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, OHA will verify:

- The anticipated repayment schedule
- The amounts paid in the past, and
- Whether the amounts to be repaid have been deducted from the family's annual income in past years

7-IV.C. DISABILITY ASSISTANCE EXPENSES

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

Attendant Care

OHA Policy

OHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

Third-party verification form signed by the provider, when possible

If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source

If third-party ~~or document review verification~~ is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months

Auxiliary Apparatus

OHA Policy

Expenses for auxiliary apparatus will be verified through:

Third-party verification of anticipated purchase costs of auxiliary apparatus

If third-party is not possible, billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months

If third-party ~~or document review verification~~ is not possible, written family certification of estimated apparatus costs for the upcoming 12 months

In addition, OHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).

Family Member is a Person with Disabilities

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. OHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

Family Member(s) Permitted to Work

OHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

OHA Policy

OHA will seek third-party verification from a ~~R~~rehabilitation ~~A~~gency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.).

If third-party ~~and document review~~ verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

Unreimbursed Expenses

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

OHA Policy

An attendant care provider will be asked to certify that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

7-IV.D. CHILD CARE EXPENSES

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I. In addition, OHA must verify that:

- The child is eligible for care (12 years or younger).
- The costs claimed are not reimbursed.
- The costs enable a family member to work, actively seek work, or further their education~~pursue an eligible activity~~.
- The costs are for an allowable type of child care.
- The costs are reasonable in accordance with Alameda County Self Sufficiency Index .

Eligible Child

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. OHA will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

Unreimbursed Expense

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

OHA Policy

The child care provider will be asked to certify that, to the best of the provider's knowledge, the child care expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

Pursuing an Eligible Activity

OHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

OHA Policy

Information to be Gathered

OHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work

Whenever possible OHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases OHA

will request verification from the agency of the member's job seeking efforts to date and require the family to submit to OHA any reports provided to the other agency.

In the event third-party verification is not available, OHA will provide the family with a form on which the family member must record job search efforts. OHA will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education

OHA will ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered.

Gainful Employment

OHA will seek verification from the employer of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified.

Allowable Type of Child Care

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

OHA Policy

OHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

OHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

OHA will verify that the child care provider is not an assisted family member.

Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

Reasonableness of Expenses

Only reasonable child care costs can be deducted.

OHA Policy

The actual costs the family incurs will be compared with OHA's established standards, which are the Alameda County expense limits of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

If the family presents a justification for costs that exceed typical costs in the area, OHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

Exhibit 7-1: Summary of Documentation Requirements for Noncitizens
[HCV GB, pp. 5-9 and 5-10]

- All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to OHA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

Elderly Noncitizens

- A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

All other Noncitizens

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

<ul style="list-style-type: none"> • Form I-551 Alien Registration Receipt Card (for permanent resident aliens) • Form I-94 Arrival-Departure Record annotated with one of the following: <ul style="list-style-type: none"> • “Admitted as a Refugee Pursuant to Section 207” • “Section 208” or “Asylum” • “Section 243(h)” or “Deportation stayed by Attorney General” • “Paroled Pursuant to Section 221 (d)(5) of the USCIS” 	<ul style="list-style-type: none"> • Form I-94 Arrival-Departure Record with no annotation accompanied by: <ul style="list-style-type: none"> • A final court decision granting asylum (but only if no appeal is taken); • A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90); • A court decision granting withholding of deportation; or • A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).
<ul style="list-style-type: none"> • Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”. 	Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.
<ul style="list-style-type: none"> • A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or • Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the <i>Federal Register</i> 	

Chapter 16

PROGRAM ADMINISTRATION

INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes OHA's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status. T

Part IV: Owner or Family Debts to OHA. This part describes policies for recovery of monies that OHA has overpaid on behalf of families, or to owners, and describes the circumstances under which OHA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part V: Section 8 Management Assessment Program (SEMAP). As an MTW agency, OHA is not subject to SEMAP. As part of MTW, OHA will develop performance measures to replace SEMAP.

Part VI: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies OHA will follow.

Part VII: Reporting and Record Keeping for Children with Environmental InterventionElevated Blood Lead Level. This part describes OHA's responsibilities for reporting, data collection, and record keeping relative to children with environmental interventionelevated blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes OHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

Part IX: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault and stalking; and maintaining the confidentiality of information obtained from victims.

Part X: Conflict of Interest Policy. This part describes OHA's conflict of interest policies in connection with all OHA administered Section 8 programs.

PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]

OHAs must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a OHA fiscal year. If funds in the administrative fee reserve are not needed to cover OHA administrative expenses, the OHA may use these funds for other housing purposes permitted by Federal, State and local law.

If a OHA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct the OHA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses. HUD also may prohibit use of the funds for certain purposes.

HUD requires the OHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

OHA Policy

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements. OHA's Board of Commissioners authorizes the Executive Director to expend up to \$50,000 per occurrence without prior Board approval.

Any item(s) exceeding \$50,000 will require prior Board approval before any charge is made against the Section 8 Administrative Fee Reserve.

PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

16-II.A. OVERVIEW

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow OHAs to adapt the program to local conditions. This part discusses how OHAs establish and update certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- *Payment Standards*, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and
- *Utility Allowances*, which specify how a family's payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

OHA Policy

Copies of the payment standard and utility allowance schedules are available for review in OHA's offices during normal business hours. Copies are also available on OHA's web site.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

OHA will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]

The payment standard sets the maximum subsidy payment a family can receive from the OHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

OHAs must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the OHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the OHA may establish a single payment standard amount for the whole FMR area, or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, the OHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

Under MTW Authority, OHA is authorized to adopt and implement any reasonable policy to establish payments, rents or subsidy levels from tenant-based assistance that differ from the currently mandated program requirement in the 1937 Act and its implementing regulations. OHA is authorized to adopt and implement any reasonable policies to calculate the tenant portion of rent that differ from the currently mandated program requirement in the 1937 Act and its implementing regulations. This authorization waives certain provisions of Section 8(o)(1), 8(o)(2), 8(o)(3), 8(o)(10), and 8(o)(13)(H)-(I) of the 1937 Act and 24 CFR 982.508, 982.503 and 982.518, as necessary to implement the Agency's Annual MTW Plan

Updating Payment Standards

When HUD updates its FMRs, OHAs must update their payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require a OHA to make further adjustments if it determines that rent burdens for assisted families in the OHA's jurisdiction are unacceptably high 24 CFR 982.503(g)].

OHA Policy (MTW)

To maximize housing opportunities for low income families, OHA is not limited to establishing payment standards the within the HUD basic range of between 90 percent and 110 percent of the published FMR for each that unit size. OHA is authorized to establish payment standards for the MTW Housing Choice Voucher program that reflect current local rental market conditions. OHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

Funding Availability: OHA will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. OHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

Rent Burden of Participating Families: Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 40 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 40 percent of adjusted monthly income as the family share, the OHA will consider increasing the payment standard. In evaluating rent burdens, OHA will not include families renting a larger unit than their family unit size.

Quality of Units Selected: OHA will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

Changes in Rent to Owner: OHA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size. OHA will also consider the trends in market rate rents in the City of Oakland.

Unit Availability: OHA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

Lease-up Time and Success Rate: OHA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Any change to payment standard amounts will be effective on the 1st of the month, at least 90 after OHA's determination of need to revise the payment standard schedule. If OHA has already processed reexaminations that will be effective on or after the 1st, of the month in which the new payments standard are to be effective, OHA will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by OHA at the time the reexamination was originally processed.

Exception Payment Standards [982.503(c)]

The OHA must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any OHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

Unit-by-Unit Exceptions [24 CFR 982.503(c)(2)(ii), 24 CFR 982.505(d), Notice PIH 2010-26]

Unit-by-unit exceptions to a OHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect the OHA's payment standard schedule.

When needed as a reasonable accommodation, a OHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [HCV GB 7-9]. The OHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the published FMR.

OHA Policy

A family that has a disabled person who requires a reasonable accommodation may request a higher payment standard of more than 120 percent of the fair market rent at the time the Request for Tenancy Approval (RTA) is submitted. The family must document the need for the exception and OHA must verify. In order to approve an exception, or request an exception from HUD, OHA must determine that:

There is a shortage of affordable units that would be appropriate for the family;
The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and
The rent for the unit is reasonable.

"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]

If a substantial percentage of families have difficulty finding a suitable unit, the OHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the OHA to set its payment standards at 90-110 percent of a higher FMR (the 50th, rather than the 40th percentile FMR). To support the request, the OHA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;
- The OHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- The OHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit. Although HUD approves the success rate payment standard for all unit sizes in the FMR area, the OHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the OHA's jurisdiction within the FMR area.

Decreases in the Payment Standard below the Basic Range [24 CFR 982.503(d)]

The OHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

16-II.C. UTILITY ALLOWANCES [MTW]

Under MTW Authority, OHA is authorized to adopt and implement any reasonable policy to establish payments, rents or subsidy levels from tenant-based assistance that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. OHA is authorized to adopt and implement any reasonable policies to calculate the tenant portion of rent that differ from the currently mandated program requirement in the 1937 Act and its implementing regulations. This authorization waives certain provisions of Section 8(o)(1), 8(o)(2), 8(o)(3), 8(o)(10), and 8(o)(13)(H)-(I) of the 1937 Act and 24 CFR 982.508, 982.503 and 982.518, as necessary to implement the Agency's Annual MTW Plan

OHA is not limited to establishing a utility allowance schedule in accordance with HUD requirements. OHA is authorized to establish a utility allowance policy for the MTW Housing Choice Voucher program that will reduce costs and achieve greater cost effectiveness in Federal expenditures and give incentives to families with children where the head of household is working, is seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient. Policies developed under MTW authority will also encourage low income families to conserve energy and lease energy efficient units.

OHA Policy

Under MTW authority, OHA will implement a Modified Utility Allowance determination. Upon approval, a household's utility allowance schedule will be based on lower of:

- the number of bedrooms authorized by the family's minimum subsidy standard, or
- the actual number of bedrooms in the unit leased by the family

If there are no tenant responsible utilities in the unit, the family will not receive a utility allowance.

When OHA's subsidy for a family exceeds the rent to owner, OHA will **not** make a Utility Reimbursement Payment (URP) to the family. (see Section 6.III.A.)

A utility allowance is an additional benefit to participants, and it is OHA's policy to limit this allowance to encourage participants to seek energy efficient units where possible and to conserve and control their energy use.

Reasonable Accommodation

HCV program regulations require a OHA to approve a utility allowance amount higher than shown on the OHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the OHA will approve a higher allowance on a case-by case basis. (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

Utility Allowance Revisions

OHAs may review their schedule of utility allowances periodically, and may revise the schedule as necessary.

PART III: INFORMAL REVIEWS AND HEARINGS

16-III.A. OVERVIEW

When a OHA makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing.

OHAs are required to include in their administrative plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d)(12) and (13)].

16-III.B. INFORMAL REVIEWS

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. [*Federal Register* 60, no. 127 (3 July 1995): 34690].

Decisions Subject to Informal Review

The OHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the OHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures
- Denying admissions for failed criminal history
- Denying admissions for failed general suitability

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by the OHA
- General policy issues or class grievances
- A determination of the family unit size under the OHA subsidy standards
- A OHA determination not to grant approval of the tenancy
- A OHA determination that the unit is not in compliance with the HQS
- A OHA determination that the unit is not in accordance with the HQS due to family size or composition

OHA Policy

OHA will only offer an informal review to applicants for whom assistance is being denied (as defined above).

Notice to the Applicant [24 CFR 982.554(a)]

The OHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the OHA decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

When denying eligibility for admission, OHA must provide the family a notice of VAWA rights as well as the HUD VAWA self-certification form (form HUD-5382) in accordance with the Violence against Women Reauthorization Act of 2013, and as outlined in 16-VII.C. The notice and self-certification form must accompany the written notification of the denial of eligibility determination.

OHA Policy

The OHA notification of denial will include a reminder of the applicant family's right to bring counsel and to referral information for local legal services organizations

Scheduling an Informal Review

OHA Policy

A request for an informal review must be made in writing and delivered to OHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of OHA's denial of assistance.

OHA must schedule and send written notice of the informal review within 10 business days of the family's request.**16-III.B. INFORMAL REVIEWS (cont.)**

Informal Review Procedures [24 CFR 982.554(b)]

The informal review will be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant will be provided an opportunity to present written or oral objections to the decision of OHA. The person conducting the review will make a determination as to whether assistance should be granted or denied.

If the decision to deny admission is upheld, the applicant will be provided written notification that this is their last administrative review and the decision is final.

Informal Review Decision [24 CFR 982.554(b)]

The OHA must notify the applicant of the OHA's final decision, including a brief statement of the reasons for the final decision.

OHA Policy

In rendering a decision, OHA will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the Notice.
- The validity of grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.
- The validity of the evidence. OHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, OHA will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, OHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

OHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 14 business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]

OHAs must offer an informal hearing for certain OHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the OHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the OHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and OHA policies.

The OHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

Decisions Subject to Informal Hearing

Circumstances for which the OHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the OHA utility allowance schedule
- A determination of the family unit size under the OHA's subsidy standards or the OHA determination to deny the family's request for exception from the subsidy standards as a reasonable accommodation
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under OHA policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by the OHA
- General policy issues or class grievances
- Establishment of the OHA schedule of utility allowances for families in the program
- A OHA determination not to approve an extension or suspension of a voucher term
- A OHA determination not to approve a unit or tenancy
- A OHA determination that a unit selected by the applicant is not in compliance with the HQS
- A OHA determination that the unit is not in accordance with HQS because of family size
- A determination by the OHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

OHA Policy

OHA will only offer participants the opportunity for an informal hearing when required to by the regulations.

Warning Meeting

It is OHA's objective to resolve disputes at the lowest level possible, and to make every effort to avoid the most severe remedies. Therefore, a meeting may be held with a Section 8 participant in cases where that participant's alleged actions or inactions may not serious enough to justify termination of assistance. The meeting would serve to inform the participant of the Housing Authority's allegations and will also function as a formal warning and official documentation of such warning. The primary goal of a warning meeting is to resolve the Housing Authority's allegations without subjecting the participant to the hearing process. The secondary goal of the meeting is to provide further documentation for cases that will proceed to a termination hearing. Regardless of whether or not a participant had a warning meeting, the participant is always entitled to an informal hearing as per HUD regulations.

Informal Hearing Procedures

Notice to the Family [24 CFR 982.555(c)]

When the OHA makes a decision that is subject to informal hearing procedures, the OHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, the OHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to the OHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

OHA Policy

In cases where OHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

- The proposed action or decision of OHA.
- A brief statement of the reasons for the decision including the regulatory reference.
- The date the proposed action will take place.
- A statement of the family's right to an explanation of the basis for OHA's decision.
- A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.
- A deadline for the family to request the informal hearing.
- To whom the hearing request should be addressed.
- The protections against termination available to victims of domestic violence, dating violence, sexual assault or stalking and their families.
- A reminder of the family's right to bring counsel to the informal hearing and referral information for local legal services organizations

Scheduling an Informal Hearing [24 CFR 982.555(d)]

When an informal hearing is required, ~~the P~~OHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

OHA Policy

A request for an informal hearing must be made in writing and delivered to OHA either in person or by first class mail, by the close of the business day, no later than 14 calendar days from the date of OHA's decision or notice to terminate assistance.

OHA must schedule and send written notice of the informal hearing to the family within 14 calendar days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the OHA may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the OHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. OHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Pre-Hearing Right to Discovery [24 CFR 982.555(e)]

Participants and OHAs are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any OHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the OHA does not make the document available for examination on request of the family, the OHA may not rely on the document at the hearing.

The OHA hearing procedures may provide that the OHA must be given the opportunity to examine at the OHA offices before the hearing, any family documents that are directly relevant to the hearing. The OHA must be allowed to copy any such document at the OHA's expense. If the family does not make the document available for examination on request of the OHA, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

OHA Policy

Whenever a participant requests an informal hearing, OHA will automatically mail a confirmation letter to the participant that includes copies of all documents related to the hearing. The family will not be charged for these documents. If the family loses their documents they will be charged for additional copies at the rates currently used by OHA. The family must request additional copies of OHA documents no later than 12:00 p.m., two business days prior to the scheduled hearing date.

~~OHA must be given an opportunity to examine, at OHA's offices before the hearing, any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, OHA will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 12:00 pm three business days prior to the scheduled hearing date.~~

Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

Informal Hearing Officer [24 CFR 982.555(e)(4)]

Informal hearings will be conducted by a person or persons approved by the OHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

OHA Policy

OHA has designated the following to serve as hearing officers:

Any OHA Manager, Management Analyst, or Lead Housing Representative that was not involved in the decision and who neither reports to, nor supervises the person who made the decision may serve as a hearing officer. OHA may also use contracted hearing officers to conduct Informal Hearings.

Attendance at the Informal Hearing

OHA Policy

Hearings may be attended by a hearing officer and the following applicable persons:

- An OHA representative(s) and any witnesses for OHA
- The participant and any witnesses for the participant
- The participant's counsel or other representative
- Any other person approved by OHA as a reasonable accommodation for a person with a disability

Conduct at Hearings

The person who conducts the hearing may regulate the conduct of the hearing in accordance with OHA's hearing procedures [24 CFR 982.555(4)(ii)].

OHA Policy

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer. The hearing officer will have everyone in attendance at the hearing sign-in, will determine if either side has any objections related to discovery and will set up the tape recorder for the hearing.

Evidence [24 CFR 982.555(e)(5)]

The OHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

OHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

Oral evidence: the testimony of witnesses

Documentary evidence: a writing that is relevant to the case, for example, a letter written to OHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

Real evidence: A tangible item relating directly to the case.

The lone exception to the above is when third party verification is needed to substantiate hearing testimony (e.g., proof of address). The hearing officer may allow a reasonable time for either side to submit relevant information. Information that is not produced by the hearing officer's deadline will not be considered.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either OHA or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

Hearing Officer's Decision [24 CFR 982.555(e)(6)]

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing must be furnished promptly to the family.

OHA Policy

In rendering a decision, the hearing officer will consider the following matters:

OHA Notice to the Family: The hearing officer will determine if the reasons for OHA's decision are factually stated in the Notice.

Discovery: The hearing officer will determine if the OHA and the family were given the opportunity to examine any relevant documents in accordance with OHA policy.

OHA Evidence to Support its Decision: The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support OHA's conclusion.

Validity of Grounds for Termination of Assistance (when applicable): The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and OHA's policies. If the grounds for termination are not specified in the regulations or in compliance with OHA's policies, then OHA's decision will be overturned.

The hearing officer will issue a written decision to the family and OHA no later than 10 business days after the hearing. The report will contain the following information:

Hearing information:

- Name of the participant;
- Date, time and place of the hearing;
- Name of the hearing officer;
- Name of the OHA representative; and
- Name of family representative (if any).

Background: A brief, impartial statement of the reason for the hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold OHA's decision.

Order: The hearing report will include a statement of whether OHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct OHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct OHA to restore the participant's program status.

Procedures for Rehearing or Further Hearing

OHA Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of OHA will take effect and another hearing will not be granted.

In addition, within 20 calendar days of the date or postmark of the hearing officer's decision is mailed to OHA and the participant, the participant may request a review by OHA's Executive Director or his/her authorized representative. Such request must be made in writing and postmarked or hand-delivered to the hearing officer and to the other party within the 20 calendar day period. The request must demonstrate cause, supported by specific references to the hearing officer's report, why the request should be granted.

If the participant requests review by the Executive Director within the specified time period, no action adverse to the participant can be taken until the Executive Director or his/her authorized representative issues a decision.. The Executive Director or his/her designee may uphold the decision, overrule the decision, or require that a new informal hearing be held. If the Executive Director decides that a new informal hearing should be held, the Executive Director will appoint a hearing officer other than the person that made the decision or a subordinate of such person. If the decision of the Executive Director or his/her designee, is not mailed or hand delivered to the participant within 30 calendar days of the request for review, the hearing officer's decision shall be deemed to be final.

A rehearing or a further hearing may be requested for the purpose of rectifying any obvious mistake of law made during the hearing or any obvious injustice not known at the time of the hearing.

It shall be within the sole discretion of OHA to grant or deny the request for further hearing or rehearing. A further hearing may be limited to written submissions by the parties, in the manner specified by the hearing officer.

OHA Notice of Final Decision [24 CFR 982.555(f)]

The OHA is not bound by the decision of the hearing officer for matters in which the OHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to Federal, State or local laws.

If the OHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the OHA must promptly notify the family of the determination and the reason for the determination.

OHA Policy

The hearing officer will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This Notice will be sent by first-class mail, postage pre-paid with an affidavit of mailing enclosed. The participant will be mailed the original "Notice of Final Decision" and a copy of the proof of mailing. A copy of the "Notice of Final Decision" along with the original proof mailing will be maintained in OHA's file.

16-III.D. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS 5.514]

[24 CFR

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the OHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the OHA's informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]

The notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the OHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

USCIS Appeal Process [24 CFR 5.514(e)]

When a OHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the OHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the OHA with a copy of the written request for appeal and the proof of mailing.

OHA Policy

OHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide OHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to OHA, of its decision. When the USCIS notifies OHA of the decision, OHA must notify the family of its right to request an informal hearing.

OHA Policy

OHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the OHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the OHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

Informal Hearing Officer

The OHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

Evidence

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the OHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

OHA Policy

OHA will automatically mail the family a confirmation letter that includes copies of all documents related to the hearing. The family will not be charged for these documents. If the family loses their documents they will be charged for additional copies at the rates currently used by OHA. The family must request additional copies of OHA documents no later than 12:00 p.m., two business days prior to the scheduled hearing date.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by OHA, and to confront and cross-examine all witnesses on whose testimony or information OHA relies.

Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

~~The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or OHA, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, OHA is still obligated to provide oral translation services in accordance with its LAP.~~

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. The OHA may, but is not required to provide a transcript of the hearing.

OHA Policy

OHA will not provide a transcript of an audio taped hearing. If requested, a copy of the hearing audio tape will be provided to the family. The family will be charged for the cost of duplication of the audio tape.

Hearing Decision

OHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

Informal Hearing Procedures for Participant Families [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the OHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the OHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

Retention of Documents [24 CFR 5.514(h)]

The OHA must retain for a minimum of 5 years the following documents that may have been submitted to the OHA by the family, or provided to the OHA as part of the USCIS appeal or the OHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

PART IV: OWNER OR FAMILY DEBTS TO THE OHA

16-IV.A. OVERVIEW

OHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the OHA [24 CFR 982.54]. This part describes the OHA's policies for recovery of monies that have been overpaid on behalf of families, or to owners.

OHA Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, OHA holds the owner or participant liable to return any overpayments to OHA.

OHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When an owner or participant refuses to repay monies owed to OHA, OHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil law suit
- State income tax set-off program

16-IV.B. REPAYMENT POLICY

Owner Debts to the OHA

OHA Policy

Any amount due to OHA by an owner must be repaid by the owner within 30 days of OHA's determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, OHA will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments OHA will offer to enter into a repayment agreement in accordance with the policies below.

If the owner refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, OHA will ban the owner from future participation in the program and pursue other modes of recovery.

Family Debts to OHA

OHA Policy

Any debt that is owed to OHA by an HCV participant must be repaid by the family. Repayment agreements continue to be owed by the family regardless of any changes in household composition including but not limited to changes in head of household. If the family is unable to repay the debt within 30 days, OHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, OHA will terminate the assistance upon notification to the family and pursue other modes of recovery.

Repayment Agreement [24 CFR 792.103]

The term *repayment agreement* refers to a formal document signed by a tenant or owner and provided to the OHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

Repayment Agreement Guidelines

Down Payment Requirement

OHA Policy

Prior to the execution of a repayment agreement, the owner or family must pay a minimum of 10 percent of the balance owed to OHA.

Payment Thresholds

OHA Policy

Amounts up to \$1,000 must be repaid within 12 months.

Amounts between \$1,000 and \$3,000 must be repaid within 24 months.

Amounts between \$3,000 and \$5,000 must be repaid within 36 months.

Amounts between \$5,000 and \$8,000 must be repaid within 48 months.

Amounts between \$8,000 and \$10,000 must be repaid within 60 months.

Amounts above \$10,000 is an automatic cause for termination from the Section 8 HCV program.

Execution of the Agreement

OHA Policy

- The head of household and all household members 18 years of age and older must sign the repayment agreement.
- Household members reaching the age of 18 years of age must sign the repayment agreement. If these members have not signed the agreement and the debt comes due, these members are still required to acquire the debt.

Due Dates

OHA Policy

All payments are due by the close of business on the 7th day of the month. If the 7th does not fall on a business day, the due date is the close of business on the first business day after the 7th.

Non-Payment

OHA Policy

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by OHA, the account will be considered delinquent. Participants who are delinquent more than twice during the term of the repayment agreement will have their Section 8 assistance terminated.

- All moneys owed to the Housing Authority must be paid by the final due date on the repayment agreement. If the debt is not repaid in full by the final due date, then the participant's assistance will be terminated.

No Offer of Repayment Agreement In Lieu of Termination

OHA Policy

The OHA may not enter into a repayment agreement in lieu of termination if there is already a repayment agreement with the family or owner, or those amounts owed exceed \$10,000. Refer to 16-IV.A. for recover methods.

PART V: MANAGEMENT ASSESSMENT (SEMAP)

16-V.A. OVERVIEW

As an MTW agency, OHA is not subject to SEMAP. As part of MTW, OHA will develop performance measures to replace SEMAP.

PART VI: RECORD KEEPING

16-VI.A. OVERVIEW

OHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, OHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

16-VI.B. RECORD RETENTION [24 CFR 982.158]

During the term of each assisted lease, and for at least three years thereafter, OHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, the OHA must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B.
- Accounts and other records supporting OHA budget and financial statements for the program;
- Records to document the basis for OHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.
- Notice PIH 2014-20 requires OHAs to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

OHA must keep confidential records of all emergency transfer requested by victims of domestic violence, dating violence, sexual assault, and stalking under OHA's Emergency Transfer Plan, as well as the outcomes of such requests, and retain the records for a period of three years [24 CFR 5.2002(e)(12)].

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

16-VI.C. RECORDS MANAGEMENT

OHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

OHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized OHA staff.

OHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

Privacy Act Requirements [24 CFR 5.212 and Form-9886]

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or OHA may release the information collected.

OHA Policy (pending HUD approval)

OHA may require each adult family member, and the head of household, spouse, or co-head, regardless of age, to sign the HUD approved OHA Authorization Release Form/Privacy Act Notice form in lieu of the form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

Upfront Income Verification (UIV) Records

OHAs that access UIV data through HUD's Enterprise Income Verification (EIV) system are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in *Enterprise Income Verification (EIV) System OHA Security Procedures*, Version 1.2, issued January 2005.

OHA Policy

Prior to utilizing HUD's UIV system, OHA will adopt and implement UIV security procedures required by HUD.

Criminal Records

OHAs may only disclose the criminal conviction records which the OHA receives from a law enforcement agency to officers or employees of the OHA, or to authorized representatives of the OHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

OHAs must establish and implement a system of records management that ensures that any criminal record received by the OHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the OHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

OHAs must establish and implement a system of records management that ensures that any sex offender registration information received by the OHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the OHA action without institution of a challenge or final disposition of any such litigation. However, a record of the screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28]. This requirement does not apply to information that is public information, or is obtained by a OHA other than under 24 CFR 5.905.

Medical/Disability Records

OHAs are not permitted to inquire about the nature or extent of a person's disability. The OHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the OHA receives a verification document that provides such information, the OHA should not place this information in the tenant file. The OHA should destroy the document.

Documentation of Domestic Violence, Dating Violence, Sexual Assault or Stalking

For requirements and OHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault or stalking, see section 16-IX.E.

PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION ELEVATED BLOOD LEAD LEVEL

16-VII.A. OVERVIEW

OHAs have certain responsibilities relative to children with environmental intervention elevated blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that OHA is subject to.

16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)]

OHAs must report the name and address of a child identified as having an environmental intervention elevated blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

OHA Policy

OHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention elevated blood lead level.

OHA has executed a partnership agreement with the Alameda County Lead Based Prevention Program (ACLPPP) for sharing and cross-referencing of information with the public health department.

16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]

At least quarterly, the OHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention elevated blood lead level.

If the OHA obtains names and addresses of environmental intervention elevated blood lead level children from the public health department(s), the OHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, the OHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, the OHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

OHA Policy

The public health department(s) has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, the OHA is not providing such a report.

PART VIII: DETERMINATION OF INSUFFICIENT FUNDING

16-VIII.A. OVERVIEW

The HCV regulations allow OHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.314(e)(1) and 982.454]. Insufficient funding may also impact the OHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology the OHA will use to determine whether or not the OHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

16-VIII.B. METHODOLOGY

OHA Policy

OHA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing OHA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, OHA will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if OHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, OHA will be considered to have insufficient funding.

PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY

16-IX.A. OVERVIEW

The Violence against Women Act of 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws take precedence over VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and OHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and OHA policies are located primarily in the following sections: 3-I.C, “Family Breakup and Remaining Member of Tenant Family”; 3-III.G, “Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking”; 10-I.A, “Allowable Moves”; 10-I.B, “Restrictions on Moves”; 12-II.E, “Terminations Related to Domestic Violence, Dating Violence, Sexual Assault or Stalking”; and 12-II.F, “Termination Notice.”

16-IX.B. DEFINITIONS [24 CFR 5.2003]

As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members’ lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

- The term *affiliated individual* means, with respect to a person:
 - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
 - Any other individual, tenant or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- The term *stalking* means:
 - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.
- The term *sexual assault* means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

16-IX.C. NOTIFICATION [24 CFR 5.2005(a)]

Notification to Public

The OHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

OHA Policy

The OHA will post the following information regarding VAWA in its offices and on its **W_Website**. It will also make the information readily available to anyone who requests it.

A [copy of the](#) notice of occupancy rights under VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (Form HUD-5380, see Exhibit 16-1)

A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (see Exhibit 16-2)

A copy of the OHA's emergency transfer plan (Exhibit 16-3)

A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5382 (Exhibit 16-4)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY)

Contact information for local victim advocacy groups or service providers

Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)]

OHAs are required to inform program applicants and participants of their rights under VAWA, including their right to confidentiality and the limits thereof when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

OHA must distribute a notice of VAWA rights, along with the VAWA self-certification form (HUD-5382) at each of these three junctures.

OHA Policy

OHA will provide all applicants with information about VAWA at the time they request an application for housing assistance as part of the written briefing packet and at the time th family is admitted to the program. OHA will also include information about VAWA in all notices of denial of assistance (see section 3-III.G).

OHA will provide all participants with information about VAWA at the time of admission (see section 5-I.B) and at scheduled reexaminations. OHA will also include information about VAWA in notices of termination of assistance, as provided in section 12-II.F.

The VAWA information provided to applicants and participants will consist of the notice in Exhibit 16-1 and ~~16-2-a copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, and Stalking.~~

OHA is not limited to providing VAWA information at the times specified in the above policy. If the PHA decides to provide VAWA information to a participant following an incident of domestic violence, Notice PIH 2017-08 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases OHA make alternative delivery arrangements that will not put the victim at risk.

OHA Policy

Whenever OHA has reason to suspect that providing information about VAWA to a participant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, OHA may decide not to send mail regarding VAWA protections to the victim's unit if OHA believes the perpetrator may have access to the victim's mail, unless requested by the victim.

When discussing VAWA with the victim, OHA will take reasonable precautions to ensure that no one can overhear the conversation, such as having conversations in a private room.

The victim may, but is not required to, designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

Notification to Owners and Managers [24 CFR 5.2005(a)(2)]

While POHAs are-is no longer required by regulation to notify owners and managers participating in the HCV program of their rights and obligations under VAWA, it may still choose to inform them.

OHA Policy

The-OHA will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the HCV-program.

The VAWA information provided to owners will consist of the notice in Exhibit 16-2 and a copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, and Stalking and Alternate Documentation.

16-IX.D. DOCUMENTATION [24 CFR 5.2007]

A OHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. The OHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the OHA's request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

- (1) A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, or Stalking), which must include the name of the perpetrator only if the name is known and safe to provide and is known to the victim. [The form may be filled out and submitted on behalf of the victim.](#)
- (2) A federal, state, tribal, territorial, or local law enforcement court or administrative record.
- (3) Documentation signed by a person who assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical professional. Acceptable documentation also includes a record of an administrative agency, and documentation from a mental health professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The OHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under “Conflicting Documentation,” nor may it require certification in addition to third-party documentation [VAWA final rule].

OHA Policy

Any request for documentation of domestic violence, dating violence, sexual assault or stalking will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

OHA may, in its discretion, extend the deadline for 10 business days. [In determining whether to extend the deadline, OHA will consider factors that may contribute to the victim's inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim's need to address health or safety issues.](#) Any extension granted by OHA will be in writing.

[Once the victim provides documentation, the PHA will acknowledge receipt of the documentation within 10 business days.](#)

Conflicting Documentation [24 CFR 5.2007(e)]

In cases where the OHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the OHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). [OHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to OHA. Individuals have 30 calendar days to return third-party verification to OHA. If OHA does not receive third-party documentation, and OHA will deny or terminate assistance as a result, OHA must hold separate hearings for the tenants \[Notice PIH 2017-08\].](#) The OHA must honor any court orders issued to protect the victim or to address the distribution of property.

OHA Policy

If presented with conflicting certification documents ([two or more forms HUD-5382 or HUD-91066](#)) from members of the same household, OHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(b)(2) or (3)(e) and by following any HUD guidance on how such determinations should be made.

[When requesting third-party documents, OHA will provide contact information for local domestic violence and legal aid offices. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.](#)

[If OHA does not receive third-party documentation within the required timeframe \(and any extensions\) OHA will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, OHA will hold separate hearings for the applicants or tenants.](#)

Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]

The OHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b). [HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.](#)

OHA Policy

If the OHA accepts an individual's statement or other corroborating evidence [\(as determined by the victim\)](#) of domestic violence, dating violence, or stalking, OHA will document acceptance of the statement or evidence in the individual's file.

Failure to Provide Documentation [24 CFR 5.2007(c)]

In order to deny relief for protection under VAWA, a OHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as the OHA may allow, the OHA may deny relief for protection under VAWA.

16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]

All information provided to the OHA regarding domestic violence, dating violence, sexual assault or stalking, including the fact that an individual is a victim of such violence sexual assault or stalking, must be retained in confidence. This means that the OHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

OHA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, OHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

EXHIBIT 16-1: SAMPLE NOTICE OF OCCUPANCY RIGHTS UNDER TO HOUSING CHOICE VOUCHER APPLICANTS AND PARTICIPANTS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA), FORM 5380

Oakland Housing Authority

Notice of Occupancy Rights under the Violence Against Women Act

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.¹ The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that the Housing Choice Voucher (HCV) program is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

Protections for Applicants

If you otherwise qualify for assistance under HCV, you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

¹ Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

Protections for Tenants

If you are receiving assistance under HCV , you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under HCV solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

Removing the Abuser or Perpetrator from the Household

OHA may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If OHA chooses to remove the abuser or perpetrator, OHA may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, OHA must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, OHA must follow Federal, State, and local eviction procedures. In order to divide a lease, OHA may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

Moving to Another Unit

Upon your request, OHA may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, OHA may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

1. You are a victim of domestic violence, dating violence, sexual assault, or stalking.

If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.

2. You expressly request the emergency transfer. Your housing provider may choose to require that you submit a form, or may accept another written or oral request.

3. You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

OHA will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

OHA's emergency transfer plan provides further information on emergency transfers, and OHA must make a copy of its emergency transfer plan available to you if you ask to see it.

Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

OHA can, but is not required to, ask you to provide documentation to “certify” that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from OHA must be in writing, and OHA must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. OHA may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to OHA as documentation. It is your choice which of the following to submit if OHA asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by OHA with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.

- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, “professional”) from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that OHA has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, OHA does not have to provide you with the protections contained in this notice.

If OHA receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), OHA has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, OHA does not have to provide you with the protections contained in this notice.

Confidentiality

OHA must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

OHA must not allow any individual administering assistance or other services on behalf of OHA (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

OHA must not enter your information into any shared database or disclose your information to any other entity or individual. OHA, however, may disclose the information provided if:

- You give written permission to OHA to release the information on a time limited basis.
- OHA needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires OHA or your landlord to release the information.

VAWA does not limit OHA's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, OHA cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if OHA can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

1. Would occur within an immediate time frame, and
2. Could result in death or serious bodily harm to other tenants or those who work on the property.

If OHA can demonstrate the above, OHA should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

Other Laws

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance with The Requirements of This Notice

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with [insert contact information for any intermediary, if applicable] Bay Area Legal Aid] or [insert HUD field office SF HUD Office].

For Additional Information

You may view a copy of HUD's final VAWA rule at: <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>.

Additionally, OHA must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact [insert name of program or rental assistance contact information able to answer questions on VAWA].

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact [Insert contact information for relevant local organizations] Bay Area Legal Aid].

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact [Insert contact information for relevant organizations] Bay Area Legal Aid]

Victims of stalking seeking help may contact [Insert contact information for relevant organizations] Bay Area Legal Aid].

Attachment: Certification form HUD-5382 [form approved for this program to be included]

A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault, or stalking. The name of the law is the Violence against Women Reauthorization Act, or “VAWA.” This notice explains your rights under VAWA.

Protections for Victims

If you are eligible for a Section 8 voucher, the housing authority cannot deny you rental assistance solely because you are a victim of domestic violence, dating violence, sexual assault, or stalking.

If you are the victim of domestic violence, dating violence, sexual assault, or stalking, you cannot be terminated from the Section 8 program or evicted based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault, or stalking that are caused by a member of your household or a guest can't be the reason for evicting you or terminating your rental assistance if you were the victim of the abuse.

Reasons You Can Be Evicted

You can be evicted and your rental assistance can be terminated if the housing authority or your landlord can show there is an actual and imminent (immediate) threat to other tenants or employees at the property if you remain in your housing. Also, you can be evicted and your rental assistance can be terminated for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault, or stalking committed against you. The housing authority and your landlord cannot hold you to a more demanding set of rules than it applies to participants who are not victims.

Removing the Abuser from the Household

Your landlord may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the assisted unit. Also, the housing authority can terminate the abuser's Section 8 rental assistance while allowing you to continue to receive assistance. If the landlord or housing authority chooses to remove the abuser, it may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, your landlord must follow federal, state, and local eviction procedures.

Moving to Protect Your Safety

The housing authority may permit you to move and still keep your rental assistance, even if your current lease has not yet expired. The housing authority may require that you be current on your rent or other obligations in the housing choice voucher program. The housing authority may ask you to provide proof that you are moving because of incidences of abuse.

Proving That You Are a Victim of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

The housing authority and your landlord can ask you to prove or “certify” that you are a victim of domestic violence, dating violence, sexual assault, or stalking. The housing authority or your landlord must give you at least 14 business days (i.e., Saturdays, Sundays, and holidays do not count) to provide this proof. The housing authority and your landlord are free to extend the deadline. There are three ways you can prove that you are a victim:

- Complete the certification form given to you by the housing authority or your landlord. The form will ask for your name, the name of your abuser, the abuser's relationship to you, the

~~date, time, and location of the incident of violence, and a description of the violence. You are only required to provide the name of the abuser if it is safe to provide and you know their name.~~

~~• Provide a statement from a victim service provider, attorney, mental health professional, or medical professional who has helped you address incidents of domestic violence, dating violence, sexual assault, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both you and the professional must sign the statement, and both of you must state that you are signing “under penalty of perjury.”~~

~~• Provide a police or court record, such as a protective order, or an administrative record. Additionally, at its discretion, the housing authority can accept a statement or other evidence provided by the applicant or participant.~~

~~If you fail to provide one of these documents within the required time, the landlord may evict you, and the housing authority may terminate your rental assistance.~~

~~Confidentiality~~

~~The housing authority and your landlord must keep confidential any information you provide about the violence against you, unless:~~

~~• You give written permission to the housing authority or your landlord to release the information.~~

~~• Your landlord needs to use the information in an eviction proceeding, such as to evict your abuser.~~

~~• A law requires the housing authority or your landlord to release the information.~~

~~If release of the information would put your safety at risk, you should inform the housing authority and your landlord.~~

~~VAWA and Other Laws~~

~~VAWA does not limit the housing authority’s or your landlord’s duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.~~

~~VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking.~~

~~For Additional Information~~

~~If you have any questions regarding VAWA, please contact _____ at _____.~~

~~For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).~~

~~Definitions~~

~~For purposes of determining whether a participant may be covered by VAWA, the following list of definitions applies:~~

~~VAWA defines domestic violence to include felony or misdemeanor crimes of violence committed by any of the following:~~

~~• A current or former spouse or intimate partner of the victim~~

~~• A person with whom the victim shares a child in common~~

~~• A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner~~

~~• A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies~~

- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction
- VAWA defines dating violence as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:
- The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship
- VAWA defines sexual assault as "any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent" (42 U.S.C. 13925(a)).
- VAWA defines stalking as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

**EXHIBIT 16-2: NOTICE TO HOUSING CHOICE VOUCHER OWNERS AND MANAGERS
REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault, and stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your obligations under VAWA.

Protections for Victims

You cannot refuse to rent to an applicant solely because he or she is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

You cannot evict a tenant who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking based on acts or threats of violence committed against the victim.

Also, criminal acts directly related to the domestic violence, dating violence, sexual assault, or stalking that are caused by a household member or guest cannot be cause for evicting the victim of the abuse.

Permissible Evictions

You can evict a victim of domestic violence, dating violence, sexual assault, or stalking if you can demonstrate that there is an actual and imminent (immediate) threat to other tenants or employees at the property if the victim is not evicted. Also, you may evict a victim for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault, or stalking. You cannot hold a victim of domestic violence, dating violence, sexual assault, or stalking to a more demanding standard than you hold tenants who are not victims.

Removing the Abuser from the Household

You may bifurcate (split) the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the unit. If you choose to remove the abuser, you may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, you must follow federal, state, and local eviction procedures.

Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

If a tenant asserts VAWA's protections, you can ask the tenant to certify that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking. You are not required to demand official documentation and may rely upon the victim's statement alone. If you choose to request certification, you must do so in writing and give the tenant at least 14 business days to provide documentation. You are free to extend this deadline. A tenant can certify that he or she is a victim by providing any one of the following three documents:

- A completed, signed HUD-approved certification form. The most recent form is HUD 5382. This form is available at the housing authority or online at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudelips/forms/hud5382.
- A statement from a victim service provider, attorney, mental health professional, or medical professional who has helped the victim address incidents of domestic violence, dating violence, sexual assault, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both the victim and the professional must sign the statement under penalty of perjury.
- A police or court record, such as a protective order, or administrative record.

If the tenant fails to provide one of these documents within 14 business days, you may evict the tenant if authorized by otherwise applicable law and lease provisions.

Confidentiality

You must keep confidential any information a tenant provides to certify that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking. You cannot enter the information into a shared database or reveal it to outside entities unless:

- The tenant provides written permission releasing the information.
- The information is required for use in an eviction proceeding, such as to evict the abuser.
- Release of the information is otherwise required by law.

The victim should inform you if the release of the information would put his or her safety at risk.

VAWA and Other Laws

VAWA does not limit your obligation to honor court orders regarding access to or control of the property. This includes orders issued to protect the victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking.

Additional Information

- If you have any questions regarding VAWA, please contact _____.

Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines domestic violence to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse or intimate partner of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grants monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines dating violence as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines sexual assault as "any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent" (42 U.S.C. 13925(a)).

VAWA defines stalking as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking

If a tenant asserts VAWA's protections, you can ask the tenant to certify that he or she is a victim of domestic violence, dating violence, sexual assault or stalking. You are not required to demand official documentation and may rely upon the victim's statement alone. If you choose to request certification, you must do so in writing and give the tenant at least 14 business days to provide documentation. You are free to extend this deadline. A tenant can certify that he or she is a victim by providing any one of the following three documents:

A completed, signed HUD approved certification form. The most recent form is HUD 5382 or HUD 91066. This form is available at the housing authority or online at <http://www.hud.gov/offices/adm/hudclips/>.

A statement from a victim service provider, attorney, or medical professional who has helped the victim address incidents of domestic violence, dating violence, sexual assault or stalking. The professional must attest under penalty of perjury to his or her belief that the victim has experienced an incident of domestic violence, dating violence, sexual assault or stalking that meets the grounds for protection under the statute. Both the victim and the professional must sign the statement under penalty of perjury.

A police or court record, such as a protective order.

If the tenant fails to provide one of these documents within 14 business days, you may evict the tenant if authorized by otherwise applicable law and lease provisions.

Confidentiality

You must keep confidential any information a tenant provides to certify that he or she is a victim of domestic violence, dating violence, sexual assault or stalking. You cannot enter the information into a shared database or reveal it to outside entities unless:

The tenant provides written permission releasing the information.

The information is required for use in an eviction proceeding, such as to evict the abuser.

Release of the information is otherwise required by law.

The victim should inform you if the release of the information would put his or her safety at risk.

VAWA and Other Laws

VAWA does not limit your obligation to honor court orders regarding access to or control of the property. This includes orders issued to protect the victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault or stalking.

Additional Information

If you have any questions regarding VAWA, please contact Bay Area Legal Aid at 510-663-4355.

HUD Notice PIH 2006-42 contains detailed information regarding VAWA's certification requirements. The notice is available at <http://www.hud.gov/offices/adm/hudclips/>.

~~For a discussion of VAWA's housing provisions, see the preamble to the final VAWA rule, which is available at <http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf>.~~

Definitions

~~For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:~~

~~VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:~~

~~A current or former spouse or intimate partner of the victim~~

~~A person with whom the victim shares a child in common~~

~~A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner~~

~~A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies~~

~~Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction~~

~~VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:~~

~~The length of the relationship~~

~~The type of relationship~~

~~The frequency of interaction between the persons involved in the relationship~~

~~VAWA defines *sexual assault* as "any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent" (42 U.S.C. 13925(a)).~~

~~VAWA defines *stalking* as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.~~

**EXHIBIT 16-2: CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING AND ALTERNATE DOCUMENTATION,
FORM HUD-5382**

**CERTIFICATION OF U.S. Department of Housing OMB Approval No. 2577-0286
DOMESTIC VIOLENCE, and Urban Development Exp. 06/30/2017
DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING,
AND ALTERNATE DOCUMENTATION**

Purpose of Form: The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE,
DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

- 1. Date the written request is received by victim:** _____
- 2. Name of victim:** _____
- 3. Your name (if different from victim's):** _____
- 4. Name(s) of other family member(s) listed on the lease:** _____

- 5. Residence of victim:** _____
- 6. Name of the accused perpetrator (if known and can be safely disclosed):** _____

- 7. Relationship of the accused perpetrator to the victim:** _____
- 8. Date(s) and times(s) of incident(s) (if known):** _____

- 10. Location of incident(s):** _____

In your own words, briefly describe the incident(s):

information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____

Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

**EXHIBIT 16-3: NMA EMERGENCY TRANSFER PLAN FOR VICTIMS OF
DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING
(HCV VERSION)**

Oakland Housing Authority

**Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence,
Sexual Assault, or Stalking**

Emergency Transfers

In accordance with the Violence Against Women Act (VAWA),² the **Oakland Housing Authority (OHA)** allows tenants or participants of covered programs who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's/participant's current unit to another unit. Emergency transfers as discussed in this Plan are only those moves required as a result of an eligible claim under VAWA. The ability to request a move is available regardless of sex, gender identity, or sexual orientation.³ The ability of OHA to honor such requests for tenants/participants currently receiving assistance, however, may depend upon 1) a preliminary determination that the she or he is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, 2) whether another dwelling unit is available, and 3) the move is safe to offer the tenant/participant for temporary or more permanent occupancy.

² Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

³ Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

This plan identifies tenants/participants who are eligible for an emergency transfer under VAWA, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants/participants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the Federal agency that oversees that OHA is in compliance with VAWA.

Covered Housing Programs

In accordance with 24 CFR 5.2003, this Emergency Transfer Plan applies to applicable HUD-covered housing programs. Covered housing programs operated or administered by OHA consist of the following:

1. Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q), with implementing regulations at 24 CFR part 891.
2. Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), with implementing regulations at 24 CFR part 891.
3. Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 et seq.), with implementing regulations at 24 CFR part 574.
4. HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 et seq.), with implementing regulations at 24 CFR part 92.
5. Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.), including the Emergency Solutions Grants program (with implementing regulations at 24 CFR part 576), the Continuum of Care program (with implementing regulations at 24 CFR part 578), and the Rural Housing Stability Assistance program (with regulations forthcoming).

6. Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5), with implementing regulations at 24 CFR part 221.
7. Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z-1), with implementing regulations at 24 CFR part 236.
8. HUD programs assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); specifically, public housing under section 6 of the 1937 Act (42 U.S.C. 1437d) (with regulations at 24 CFR Chapter IX), tenant-based and project-based rental assistance under section 8 of the 1937 Act (42 U.S.C. 1437f) (with regulations at 24 CFR chapters VIII and IX), and the Section 8 Moderate Rehabilitation Single Room Occupancy (with implementing regulations at 24 CFR part 882, subpart H).
9. The Housing Trust Fund (12 U.S.C. 4568) (with implementing regulations at 24 CFR part 93).

Covered housing provider refers to the individual or entity under a covered housing program that has responsibility for the administration and/or oversight of VAWA protections. OHA is the covered housing provider for this Emergency Transfer Plan. For any of the covered housing programs, it is possible that there may be more than one covered housing provider; that is, depending upon the VAWA duty or responsibility to be performed by a covered housing provider, the covered housing provider may not always be OHA.

Eligibility for Emergency Transfers

A tenant/participant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L as well as under provisions of California state law such as Penal Code §273.5 is eligible for an emergency transfer:

a) if the tenant/participant expressly requests the transfer; and

b) Either:

1. The tenant/participant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit; or
2. In the case of sexual assault, the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or the sexual assault occurred on the premise during the 90-day period preceding the date of the request for transfer. (See 24 CFR § 5.2005(e)(2).)

A tenant/participant requesting an emergency transfer must expressly request the move in accordance with the procedures described in this plan.

Regardless of their compliance with the lease or participant obligations, tenants/participants may still request an emergency transfer if they meet the eligibility requirements in this section. However, qualifying for an emergency transfer does not guarantee continued assistance under the program or a transfer to another covered housing program. The emergency transfer requirements under VAWA do not supersede any eligibility or occupancy requirements that may apply under a covered housing program. (See 24 CFR 5.2005(e)(13).)

Emergency Transfer Request Documentation

To request an emergency transfer, the tenant/participant shall notify OHA's management office and submit a written request for a move to the property/site management office or to 1540 Webster Street, Oakland, CA 94612. OHA will provide reasonable accommodations to this policy for individuals with disabilities.

Written Request for a Transfer

The tenant's/participant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant/participant reasonably believes that there is a threat of imminent harm from further violence if the tenant/participant were to remain in the same dwelling unit assisted under OHA's program; OR
2. A statement that the tenant/participant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

Confidentiality

OHA will keep confidential any information that the tenant/participant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant/participant gives OHA written permission to release the information on a time limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant. See

the Notice of Occupancy Rights under the Violence Against Women Act For All Tenants/participants for more information about OHA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

Emergency Transfer Timing and Availability

OHA cannot guarantee that a move request will be approved or how long it will take to process a move request. If a tenant/participant reasonably believes a proposed move would not be safe, the tenant/participant may request a move to a different unit. If a unit is available, the transferred tenant/participant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant/participant has been moved. OHA may be unable to move a tenant/participant to a particular unit if the tenant/participant has not or cannot establish eligibility for that unit.

If OHA has no safe and available units for which a tenant/participant who needs an emergency transfer is eligible, OHA will assist the tenant/participant in identifying other housing providers who may have safe units that are immediately available within 30 days to which the tenant/participant could move. At the tenant's request, OHA will also assist tenants/participants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

Safety and Security of Tenants/Participants

Pending processing of the move and the actual move, if it is approved and occurs, the tenant/participant is urged to take all reasonable precautions to be safe.

Tenants/participants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Tenants/participants who have been victims of sexual assault may call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>.

Tenants/participants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

Attachment: Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

**EXHIBIT 16-4: EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF
DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING,
FORM HUD-5383**

EMERGENCY TRANSFER **U.S. Department of Housing** OMB Approval No. 2577-0286
REQUEST FOR CERTAIN **and Urban Development** Exp. 06/30/2017
VICTIMS OF DOMESTIC
VIOLENCE, DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING

Purpose of Form: If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

The requirements you must meet are:

- (1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.

(2) You expressly request the emergency transfer. Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

Submission of Documentation: If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER

1. Name of victim requesting an emergency transfer: _____

2. Your name (if different from victim's) _____

3. Name(s) of other family member(s) listed on the lease: _____

4. Name(s) of other family member(s) who would transfer with the victim: _____

5. Address of location from which the victim seeks to transfer: _____

6. Address or phone number for contacting the victim: _____

7. Name of the accused perpetrator (if known and can be safely disclosed): _____

8. Relationship of the accused perpetrator to the victim: _____

9. Date(s), Time(s) and location(s) of incident(s): _____

10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. _____

11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit. _____

12. If voluntarily provided, list any third-party documentation you are providing along with this notice: _____

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature

Signed on (Date)

MODEL OWNER NOTIFICATION OF RIGHTS AND OBLIGATIONS

[Insert Name of Housing Provider]

NOTIFICATION OF YOUR RIGHTS AND OBLIGATIONS

UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA)

VAWA provides protections for Section 8 Housing Choice Voucher (HCV) and PBV applicants, tenants, and participants from being denied assistance on the basis or as a direct result of being a victim of domestic violence, dating violence, sexual assault and stalking.

Purpose

Many of VAWA's protections to victims of domestic violence, dating violence, sexual assault and stalking involve action by the public housing agency (PHA), but some situations involve action by owners of assisted housing. The purpose of this notice (herein called "Notice") is to explain your rights and obligations under VAWA, as an owner of housing assisted through [insert name of housing provider] HCV program. Each component of this Notice also provides citations to HUD's applicable regulations.

Denial of Tenancy

Protections for applicants: Owners cannot deny tenancy based on the applicant having been or currently being a victim of domestic violence, dating violence, sexual assault, or stalking. However, the applicant must be otherwise eligible for tenancy. (See 24 Code of Federal Regulations (CFR) 982.452(b)(1).)

Eviction

Protections for HCV participants: Incidents or threats of domestic violence, dating violence, sexual assault, or stalking will not be considered a serious or repeated lease violation by the victim, or good cause to terminate the tenancy of the victim (24 CFR 5.2005(c)). Protection also applies to criminal activity related directly to domestic violence, dating violence, sexual assault, or stalking, conducted by a member of a tenant's household or any guest or other person under the tenant's control, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking (24 CFR 5.2005(b)(2)).

Limitations of VAWA protections:

a. Nothing in the VAWA Final Rule limits the authority of an owner, when notified of a court order, to comply with a court order with respect to (24 CFR 5.2005(d)(1)):

1) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or

2) The distribution or possession of property among members of a household in a case.

b. Nothing in the VAWA Final Rule limits an owner from evicting a victim of domestic violence, dating violence, sexual assault, or stalking for a lease violation that is not premised on an act of domestic violence, dating violence, sexual assault, or stalking, as long as the owner does not subject

the victim to more demanding standards than other tenants when deciding whether to evict. (See 24 CFR 5.2005(d)(2).)

c. Nothing in the VAWA Final Rule limits an owner from evicting a tenant (including the victim of domestic violence, dating violence, sexual assault, or stalking) if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to the HCV property would be present if the tenant or lawful occupant is not evicted. (See 24 CFR 5.2005(d)(3).)

i. In this context, words, gestures, actions, or other indicators will be considered an “actual and imminent threat” if they meet the following standards: An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur. (See 24 CFR 5.2003.)

ii. Any eviction due to “actual and imminent threat” should be utilized by an owner only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents. (See 24 CFR 5.2005(d)(4).)

Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

If an applicant or tenant requests VAWA protection based on status as a victim of domestic violence, dating violence, sexual assault, or stalking, the owner has the option to request that the victim document or provide written evidence to demonstrate that the violence occurred. However, nothing in HUD’s regulation requires a covered housing provider to request this documentation. (See 24 CFR 5.2007(b)(3).)

If the owner chooses to request this documentation, the owner must make such request in writing. The individual may satisfy this request by providing any one document type listed under 24 CFR 5.2007(b)(1):

- a. Form HUD-55383 (Self-Certification Form); or
- b. A document: 1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse;
- 2) Signed by the applicant or tenant; and
- 3) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under 24 CFR part 5, subpart L, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or
- c. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- d. At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

The owner must accept any of the above items (a – c). The owner has discretion to accept a statement or other evidence (d).

The owner is prohibited from requiring third-party documentation of the domestic violence, dating violence, sexual assault, or stalking, unless the submitted documentation contains conflicting information.

If the owner makes a written request for documentation, the owner may require submission of that documentation within 14 business days after the date that the individual received the written request for documentation. (24 CFR 5.2007(a)(2)). The owner may extend this time period at its discretion. During the 14 business day period and any granted extensions of that time, no adverse actions, such as evictions or terminations, can be taken against the individual requesting VAWA protection.

Once a victim provides documentation of domestic violence, dating violence, sexual assault, or stalking, the owner is encouraged to acknowledge receipt of the documentation in a timely manner.

If the applicant or tenant fails to provide documentation that meets the criteria in 24 CFR 5.2007 within 14 business days after receiving the written request for that documentation or within the designated extension period, nothing in VAWA Final Rule may be construed to limit the authority of the covered housing provider to:

- a. Deny admission by the applicant or tenant to the housing or program;
- b. Deny assistance under the covered housing program to the applicant or tenant;
- c. Terminate the participation of the tenant in the covered housing program; or
- d. Evict the tenant, or a lawful occupant that commits a violation of a lease.

An individual's failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it preclude the individual's ability to raise an incident of domestic violence, dating violence, sexual assault, or stalking at eviction or termination proceedings.

Moves

A victim of domestic violence, dating violence, sexual assault, or stalking may move in violation of their lease if the move is required to protect their safety. If a move results in the termination of the Housing Assistance Payment Contract, the lease is automatically terminated.

Lease Bifurcation

Owners may choose to bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual. (See 24 CFR 5.2009(a).) If an owner chooses to bifurcate the lease, the owner must comply with the reasonable time to establish eligibility under the covered housing program or find alternative housing following lease bifurcation provision in 24 CFR 5.2009(b). VAWA protections, including bifurcation, do not apply to guests or unreported members of a household or anyone else residing in a household who is not a tenant.

Eviction, removal, termination of occupancy rights, or termination of assistance must be effected in accordance with the procedures prescribed by federal, state, or local law for termination of leases. To avoid unnecessary delay in the bifurcation process, HUD recommends that owners seek court-ordered eviction of the perpetrator pursuant to applicable laws. This process results in the underlying lease becoming null and void once the owner regains possession of the unit. The owner would then execute a new lease with the victim.

Evictions Due to “Actual and Imminent Threat” or Violations Not Premised on Abuse

The VAWA Final Rule generally prohibits eviction on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for assistance, participation or occupancy. (See 24 CFR 5.2005.)

However, the VAWA Final Rule does not prohibit an owner from evicting a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. Nor does the VAWA Final Rule prohibit an owner from evicting a tenant if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to property of the owner would be present if that tenant or lawful occupant is not evicted or terminated from assistance. (See 5.2005(d)(2) and (3).)

In order to demonstrate an actual and imminent threat to other tenants or employees at the property, the covered housing provider must have objective evidence of words, gestures, actions, or other indicators that meet the standards in the following definition:

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk;
- The nature and severity of the potential harm;
- The likelihood that the potential harm will occur; and
- The length of time before the potential harm would occur.

(See 24 CFR 5.2003 and 5.2005(d)(2).)

Confidentiality

Any information submitted to a covered housing provider under 24 CFR 5.2007, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, must be maintained in strict confidence by the covered housing provider. (See 24 CFR 5.2007(c).)

Employees of the owner (or those within their employ, e.g., contractors) must not have access to the information unless explicitly authorized by the owner for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law (e.g., the information is needed by an employee to provide the VAWA protections to the victim).

The owner must not enter this information into any shared database, or disclose this information to any other entity or individual, except to the extent that disclosure is:

- a. Requested or consented to in writing by the individual (victim) in a time-limited release;
- b. Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or
- c. Otherwise required by applicable law.

When communicating with the victim, owners must take precautions to ensure compliance with these confidentiality requirements.

Service Providers

[insert name of housing provider] has extensive relationships with local service providers. [insert name of housing provider] staff are available to provide referrals to shelters, counselors, and advocates. These resources are also provided in [insert name of housing provider] Annual and 5-Year Plan, Administrative Plan, VAWA Notice of Occupancy Rights, and Emergency Transfer Plan. A list of local service providers is attached to this Notice.

Definitions

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

Affiliated individual, with respect to an individual, means:

(1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or

(2) Any individual, tenant, or lawful occupant living in the household of that individual.

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Dating violence means violence committed by a person:

(1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
(2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. The term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

Sexual assault means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's individual safety or the safety of others; or
- (2) Suffer substantial emotional distress.

VAWA means the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.).

Attached:

Legal services and the domestic violence resources for the Metro area

Form HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
[insert name of housing provider] VAWA Notice of Occupancy Rights

EXHIBIT 16-5: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER OWNERS AND MANAGERS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)

This sample notice was adapted from a notice prepared by the National Housing Law Project. A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault, and stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your obligations under VAWA.

Protections for Victims

You cannot refuse to rent to an applicant solely because he or she is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

You cannot evict a tenant who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking based on acts or threats of violence committed against the victim.

Also, criminal acts directly related to the domestic violence, dating violence, sexual assault, or stalking that are caused by a household member or guest cannot be cause for evicting the victim of the abuse.

Permissible Evictions

You can evict a victim of domestic violence, dating violence, sexual assault, or stalking if you can demonstrate that there is an *actual and imminent* (immediate) threat to other tenants or employees at the property if the victim is not evicted. Also, you may evict a victim for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault, or stalking. You cannot hold a victim of domestic violence, dating violence, sexual assault, or stalking to a more demanding standard than you hold tenants who are not victims.

Removing the Abuser from the Household

You may bifurcate (split) the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the unit. If you choose to remove the abuser, you may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, you must follow federal, state, and local eviction procedures.

Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

If a tenant asserts VAWA's protections, you can ask the tenant to certify that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking. You are not required to demand official documentation and may rely upon the victim's statement alone. If you choose to request certification, you must do so in writing and give the tenant at least 14 business days to provide documentation. You are free to extend this deadline. A tenant can certify that he or she is a victim by providing any one of the following three documents:

A completed, signed HUD-approved certification form. The most recent form is HUD-5382. This form is available at the housing authority or online at <https://portal.hud.gov/hudportal/documents/huddoc?id=5382.docx>.

A statement from a victim service provider, attorney, mental health professional, or medical professional who has helped the victim address incidents of domestic violence, dating violence, sexual assault, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both the victim and the professional must sign the statement under penalty of perjury.

A police or court record, such as a protective order, or administrative record.

If the tenant fails to provide one of these documents within 14 business days, you may evict the tenant if authorized by otherwise applicable law and lease provisions.

Confidentiality

You must keep confidential any information a tenant provides to certify that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking. You cannot enter the information into a shared database or reveal it to outside entities unless:

T he tenant provides written permission releasing the information.

T he information is required for use in an eviction proceeding, such as to evict the abuser.

R elease of the information is otherwise required by law.

The victim should inform you if the release of the information would put his or her safety at risk.

VAWA and Other Laws

VAWA does not limit your obligation to honor court orders regarding access to or control of the property. This includes orders issued to protect the victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking.

Additional Information

I f you have any questions regarding VAWA, please contact _____.

Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

current or former spouse or intimate partner of the victim A

person with whom the victim shares a child in common A

person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner A

person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies A

any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction A

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

the length of the relationship T

the type of relationship T

the frequency of interaction between the persons involved in the relationship T

VAWA defines *sexual assault* as "any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent" (42 U.S.C. 13925(a)).

VAWA defines *stalking* as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

PART X: CONFLICT OF INTEREST POLICY

16-X.A. OVERVIEW

Neither the OHA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with any of OHA's **Section 8** programs in which any of the following classes of persons has any interest, direct or indirect, during their tenure or for one year thereafter:

1. Any present or former member or officer of the Authority (except a participant commissioner);
2. Any employee of the Authority, or any contractor, subcontractor or agent of the Authority, who formulates policy or who influences decisions with respect to the programs (except that program participants may be hired as employees of the Authority);
3. Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or
4. Any member of the Congress of the United States.

16-X.B. EMPLOYEES WHO ARE ALSO AUTHORITY CLIENTS

An employee of OHA who is a client or who is related to a client has a responsibility to avoid any conflict of interest that might lead to unequal treatment. Therefore, the following procedural standards are to be employed in all such circumstances.

1. No employees, nor their staff if they are a Manager or Supervisor, shall handle matters related to their own cases or to the cases(s) of member(s) of their family.
2. Employees of the Leased Housing Department shall be responsible for reporting to the Director of Human Resources and the Director of Leased Housing any potential or actual conflict of interest. If the employee is unsure whether or not a conflict of interest exists, the employee shall refer the matter to the Director of Human Resources and the Director of Leased Housing for a determination.

It shall be the responsibility of the Director of Leased Housing to ensure that any actions or decisions taken within the Leased Housing Department affecting any employee's participant status or the participant status of an employee's relative are in accordance with all applicable policies and procedures. It shall be the responsibility of the Director of Housing Management to ensure that any actions or decisions taken within the Eligibility Department affecting any applicant's status or the applicant status of an employee's relative are in accordance with all applicable policies and procedures. Both Directors shall ensure that the employee or employee's relative shall neither suffer any loss of benefit nor receive any gain of benefits as a result, direct or indirect, of her/his employment at the Authority or her/his relationship to an Authority employee. As such:

1. Any time action is taken or a decision is made which affects the applicant or participant status of an Authority employee or a relative of an Authority employee in any way, all Authority paperwork must be received and signed by the appropriate Director before the action or decision becomes effective.

- Each initial determination of eligibility and each selection to a program of an Authority employee or a relative of an Authority employee shall be forwarded from the Director of Housing Management to the Executive Office for review and final approval. A certification by the Director of Housing Management shall accompany the file to the Executive Office stating that all determinations and actions taken have been reviewed pursuant to applicable policies and procedures.

16-X.C. DISCLOSURE

Member of the classes listed below must disclose their interest or prospective interest to OHA and HUD as follows:

Relation to OHA	Disclosure Required	Disclosure Frequency
OHA Board Members All Executive Office Staff All Directors All Section 8 Staff All Eligibility Staff All <u>MIS-IT</u> Staff All Finance Staff	<ul style="list-style-type: none"> • <i>CA Statement of Economic Interests</i> 	Annually Annually
Contractors Sub-contractors Agents of the Authority	<ul style="list-style-type: none"> • <i>CA Statement of Economic Interests</i> • <i>OHA Statement of Employee and Familial Participation in Housing Authority Programs</i> 	Upon contract with OHA, annually thereafter Upon contract with OHA, annually thereafter

16-X.D. DISCIPLINARY PROCEDURES

It is the policy of OHA to operate all of its programs in an ethical manner and in such a way that no group or individual shall have an unfair advantage in the receipt of OHA's programs and services. OHA will vigorously investigate any suspected violation of its Conflict of Interest policies and will cooperate with HUD's Office of Inspector General, local and OHA police and

any other appropriate bodies when conducting investigations of suspected violations. Appropriate penalties shall be determined for each individual case. Available penalties include:

- a. Written reprimand;
- b. Suspension;
- c. Probation;
- d. Demotion;
- e. Termination; and
- f. Criminal Prosecution.

16-X.E. WAIVER CONFLICT OF INTEREST PROVISIONS

The conflict of interest prohibitions detailed under this section may be waived for good cause by the HUD field office.

16-X.F. GIFT POLICY

The Leased Housing Department utilizes OHA's Gift Policy.

OHA Policy

It is the policy of OHA to operate all of its programs in an ethical manner and in such a way that no group or individual shall have an unfair advantage in the receipt of OHA's programs and services. OHA will vigorously investigate any suspected violation of its Gift Policy and will cooperate with HUD's Office of Inspector General, local and OHA police and any other appropriate bodies when conducting investigations of suspected violations. Appropriate penalties shall be determined for each individual case. Available penalties include:

- a. Written reprimand;
- b. Suspension;
- c. Probation;
- d. Demotion;
- e. Termination; and
- f. Criminal Prosecution.

(Page intentionally left blank)

Chapter 17
PROJECT-BASED VOUCHERS
[24 CFR 983.1 through 983.262]

INTRODUCTION

This chapter describes HUD regulations and OHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors that OHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at ~~the PHAOHA~~'s discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how ~~the PHAOHA~~ and the owner will select a family to receive PBV assistance.

Part VII: Occupancy. This part discusses occupancy requirements related to the lease, and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.

The program rules discussed within this plan chapter are primarily those required by HUD. OHA is authorized under the Moving to Work (MTW) Demonstration program to develop and adopt reasonable policies and processes to explore and test innovative methods of delivering Section 8 Housing Choice Voucher assistance and housing and supportive services to low-income families in Oakland. MTW policies and procedures are described in OHA's MTW Annual Plan and may conflict with HUD regulatory requirements. In the event that

the policies do conflict, the approved MTW policy shall prevail. Where no MTW policy or procedure exists, then standard Section 8 HCV rules and regulations apply.

PART I: GENERAL REQUIREMENTS

17-I.A. OVERVIEW [24 CFR 983.5]

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its ~~voucher program budget authority authorized units~~ and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. ~~In addition, PHAs are limited to project-basing up to 25 percent (25%) of units in a single development.~~ PHAs may only operate a PBV program if doing so is consistent with ~~the PHAOHA~~'s Annual Plan and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

~~The program rules discussed within this plan are primarily those required by HUD. OHA is authorized under the Moving to Work (MTW) Demonstration program to develop and adopt reasonable policies and process to explore and test innovative methods of delivering Section 8 Voucher assisted housing and supportive services to low income families in Oakland. MTW policies and procedures may conflict with HUD regulatory requirements. Where no MTW policy or procedure exists, then standard Section 8 rules and regulations apply.~~

~~Under MTW authority, OHA is authorized to develop and adopt reasonable policy and process for project-basing Section 8 tenant-based leased housing assistance. All HUD reviews and approvals related to project-basing of Section 8 Vouchers are suspended during the MTW Demonstration, including but not limited to any approvals related to any required assessment for voluntary conversion or disposition applications.~~

~~OHA's MTW Annual Plan and Annual Reports will be posted on the OHA website at www.oakha.org.~~

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, OHA is not required to reduce the number of these units if the amount of authorized units is subsequently reduced. However, the PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether OHA has vouchers available for project-basing [FR Notice 1/18/17].

Additional Project-Based Units [FR Notice 1/18/17]

OHA may project-base an additional 10 percent of its units above the 20 percent program limit, if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302).
- Are specifically made available to house families that are comprised of or include a veteran.

- Veteran means an individual who has served in the United States Armed Forces.
- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.
- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.
 - For these projects, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].
 - OHA Policy
MTW Activity #12-01 allows OHA to eliminate PBV caps and time limits.

Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]

PBV units under the RAD program and HUD-VASH PBV set-aside vouchers do not count toward the 20 percent limitation when PBV assistance is attached to them.

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap.
In order to be excepted, the unit must meet the following conditions:

- The unit must be covered under a PBV HAP contract that first became effective on or after 4/18/17; and
- In the five years prior to the date the PHA either issued the RFP or selected the project, the unit either:
 - Received Public Housing Capital or Operating Funds, Project-Based Rental Assistance, Housing for Elderly (Section 202), Housing for Persons with Disabilities (section 811), Rent Supplement (Rent Supp), or Rental Assistance Program (RAP); or
 - Was subject to a rent restriction through a loan or insurance program as a result of Section 236, Section 221(d)(3) or (d)(4) BMIR, Housing for Elderly Persons (Section 202), or Housing for Persons with Disabilities (Section 811)
 - Received assistance under the Flexible Subsidy Program (Section 201 of the Housing and Community Development Amendments of 1978)

Units that have previously received either PBV or HCV assistance are not covered under the exception.

OHA Policy

Under MTW ~~Activity #12-02 Demonstration Program~~, OHA is authorized to determine the percentage of ~~housing tenant-based~~ voucher assistance that it is permitted to be project-based ~~and the percentage of project-based assistance allowed in a single development~~, and criteria for expending funds for physical improvements on those units that differ from the percentage and criteria requirements currently mandated in the 1937 Act and its implementing regulations. ~~This authorization waives certain provisions of Section 8(o)(13) of the 1937 Act and 24 CFR 983 as necessary to implement the Agency's Annual MTW Plan.~~

~~Under existing regulations, Public Housing Authorities (PHA) are limited to project basing up to 20 percent (20%) of the amount of budget authority allocated to the PHAOHA by HUD in the PHAOHA voucher program. In addition, PHAs are limited to project basing up to 25 percent (25%) of units in a single development.~~ Under MTW Authority, ~~the caps on both the overall number of~~ PBV allocations ~~and~~ the number of PBVs that can be allocated to a single development are eliminated.

PBV assistance may be attached to existing, newly constructed, rehabilitated and also Sponsor Based housing

17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE

[24 CFR 983.2]

Much-Many of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PQHA policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at [24 CFR 983.2](#).

OHA Policy

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations or OHA policies, including policies and process developed under the MTW demonstration program for the tenant-based voucher administration, may also apply to the PBV program and its participants.

17-I.C. RELOCATION REQUIREMENTS [[24 CFR 983.7](#)]

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. PQHAs may not use voucher program funds to cover relocation costs, except that PQHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in [24 CFR 982.155](#) and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of the OP HA to ensure the owner complies with these requirements.

OHA Policy

Add language from 2016 RFQ regarding no displacement

17-I.D. EQUAL OPPORTUNITY REQUIREMENTS [[24 CFR 983.8](#)]

OHA must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, OHA must comply with OHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with [24 CFR 903.7\(o\)](#).

PART II: PBV OWNER PROPOSALS

17-II.A. OVERVIEW

With certain exceptions, The POHA must describe the procedures for owner submission of PBV proposals and for the PHAOHA-selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the POHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57]. OHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

17-II.B. OWNER PROPOSAL SELECTION PROCEDURES

The POHA must select PBV proposals in accordance with the selection procedures in the PHAOHA-administrative plan.

OHA may select PBV proposals by either of the following methods.

- OHA request for PBV Proposals. OHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the OHA request. The PHAOHA may not limit proposals to a single site or impose restrictions that explicitly or particularly preclude owner submission of proposals for PBV housing on different sites.
- OHA may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance. OHA need not conduct another competition.

Units Selected Non-Competitively [FR Notice 1/18/17]

For certain public housing projects where OHA has an ownership interest or control and will spend a minimum amount per unit on rehabilitation or construction, OHA may select a project without following one of the two processes above.

OHA Policy

OHA will not attach PBVs to projects owned by OHA as described above.

OHA may select projects under MTW authority without engaging in a competitive process, subject to the approval of the OHA Board of Commissioners. In accordance with MTW policyActivity #06-02, certain project-

based voucher proposals may be selected without engaging in a competitive process. Projects selected must be approved by the OHA Board of Commissioners and are subject to HUD's requirements regarding environmental and subsidy layering reviews.

OHA may select projects based on MTW authority waivers granted by HUD as stated in OHA's annual MTW Plan. See www.oakha.org for latest versions of the annual MTW Annual Plan. Authorization waiver examples include override allocation caps and overall percentage allocation caps, site selection standards, combine PBV contracts for multiple non-contiguous sites, alternative initial rent determinations for PBV units and definition of a project for allocation.

Solicitation and Selection of PBV Proposals [24 CFR 983.51(b) and (c)]

PHA-OHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the PHAOHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of a PHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

OHA Policy

OHA Request for Proposals for Rehabilitated and Newly Constructed Units

OHA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the following local newspapers of general circulation and trade journals.

The Oakland Tribune

OHA will also utilize non-English language newspapers

In addition, OHA will post the RFP/RFQ and proposal submission and rating and ranking procedures on its electronic web site (www.oakha.org).

OHA will publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for a minimum of one two consecutive weeks. The advertisement will specify estimate the number of units that OHA estimates that it will be able to assist under the funding that OHA is making available.

The advertisement will contain a statement that participation requires compliance with Fair Housing and Equal Opportunity requirements and that the Federal Labor Standards provisions may be applicable.

In order for the proposal to be considered, the owner must submit a proposal to OHA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP/RFQ. Incomplete proposals will not be reviewed.

OHA will rate and rank proposals for rehabilitated and newly constructed housing using but not limited to the following criteria:

- Owner experience and capability to build, rehabilitate, or operate housing as identified in the RFP;
- Extent to which the project furthers ~~the PHAOHA~~ goal of de-concentrating poverty and expanding housing and economic opportunities and goals specified in the OHA Development Policy;
- Extent to which the project preserves or replaces affordable housing units at risk of non-renewal or loss of a previously committed affordable housing subsidy; and
- If applicable, the extent to which services for special populations are available on site or in the immediate area for occupants of the property.

OHA Requests for Proposals for Existing Housing Units

OHA will advertise its request for proposals (RFP) for existing housing in ~~the following local newspapers of general circulation and non-English language newspapers in accordance with the LAP trade journals.~~

~~The Oakland Tribune~~

~~OHA will also utilize non-English language newspapers~~

In addition, OHA will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site (www.oakha.org).

- OHA will publish its advertisement in the ~~local newspapers and trade journals mentioned above~~ for at least one day per week for two consecutive weeks. The advertisement will ~~estimate specify~~ the number of units that OHA estimates that it will be able to assist under the funding that OHA is making available.

The advertisement will contain a statement that participation requires compliance with Fair Housing and Equal Opportunity requirements.

In order for the proposal to be considered, the owner must submit a proposal to OHA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP/~~RFQ~~. Incomplete proposals will not be reviewed.

OHA will rate and rank proposals for existing housing using but not limited to the following criteria:

- Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;
- Owner experience and capability to operate housing as identified in the RFP;
- Extent to which the project furthers ~~the PHAOHA~~ goal of de-concentrating poverty and expanding housing and economic opportunities;
- Extent to which the project preserves or replaces affordable housing units at risk of non-renewal or loss of a previously committed affordable housing subsidy;
- If applicable, owner experience and capability to operate special needs housing as identified in the RFP/~~RFQ~~; and

- If applicable, extent to which services for special populations are available on site or in the immediate area for occupants of the property.
- Location and need for a specific unit type as detailed in an RFP/RFQ.
- Extent to which the project targets units in geographic areas of choice as specified in the RFP/RFQ
- Extent to which the project complies with OHA Development Policy overreaching goals (see www.oakha.org) as specified in the RFP/RFQ

OHA Requests for Proposals for Sponsor Based Housing Units

Under MTW authority, OHA may award project-based funding directly to a service provider that will administer the project-based rental assistance as Sponsor Based Housing. The objective of PBV Sponsor Based Housing is to enhance the delivery of supportive services to severely underserved populations under a housing first model. The service provider must utilize PBV Sponsor Based Housing to provide rental assistance for either transitional or permanent supportive housing units committed to the service program. Eligible units must be committed to the service provider under a long term master lease or agreement or as a set aside reserved for housing only a special needs population.

OHA will provide details that will include sponsor reporting requirements and restrictions on how PBV Sponsor Based Housing funds may be utilized in its Request of Proposals/Qualifications. A Sponsor Based Housing project may only be selected in response to an OHA Request for Proposals/Qualifications(RFP/RFQ) and an award must be approved by the OHA Board of Commissioners.

OHA will advertise its RFP/RFQ for Project-Based Sponsor Based Housing in local newspapers of general circulation and trade journals.

~~OHA will also utilize local~~ non-English language newspapers and media in accordance with the LAP.

In addition, OHA will post the RFP/RFQ and proposal submission and rating and ranking procedures on its electronic web site (www.oakha.org).

OHA will publish its advertisement in the newspapers and trade journals for at least one day per week for two consecutive weeks. The advertisement will specify the number of units that OHA estimates that it will be able to assist under the funding that OHA is making available.

The advertisement will contain a statement that participation requires compliance with Fair Housing and Equal Opportunity requirements and that the Federal Labor Standards provisions may be applicable.

In order for the proposal to be considered, the applicant must submit a proposal to OHA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP/RFQ. Incomplete proposals will not be reviewed.

OHA will rate and rank proposals for Project-Based Sponsor Based Housing using but not limited to the following criteria:

- Extent to which there is a need for housing and services for special populations in the immediate area or for occupants of the project;
- Service provider experience and capability to operate housing as identified in the RFP/RFQ;
- Length, term and stability service providers funding source and commitment for available rental unit(s);
- Extent to which the service provider has maintained successful working agreements in operating service enhanced housing in partnership with affordable housing developers;
- Extent to which the project furthers ~~the PHAOHA~~ goal of deconcentrating poverty and expanding housing and economic opportunities for families with disabilities; and
- Extent to which the project preserves or replaces affordable housing units at risk of non renewal or loss of a previously committed affordable housing subsidy;
- Extent to which the proposal meets the requirements of OHA funding availability

OHA Selection of Proposals Subject to Competition under a Federal, State, or Local Housing Assistance Program

OHA may accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program.

In order to both maximize the impact of its project-based vouchers and to minimize the number of application processes that developers face, OHA may distribute project-based assistance via the competitive processes for the release of affordable housing funding distributed through Federal, State or local competitive entity's, , *Notice of Funding Availability (NOFA) for development, preservation or rehabilitation of affordable rental housing*.

OHA will announce that it will consider PBV proposals, directly within the the competitive entity's which includes but is not limited to the City of Oakland NOFA offering and subject to funding availability, extend a Letter of Invitation to NOFA awarded projects that will allow them to request vouchers. OHA will detail any minimum threshold requirements, request a procedures, a deadline and the award process within the PBV Letter of Invitation.

OHA may:

- Limit the number of vouchers available in a funding round or competition,
- Elect not to participate in a particular NOFA, funding round or competition, or
- Award more or less than the number of vouchers requested in an owner proposal.

A project selected for funding through a competitive *Federal, State or local competitive entity's, Notice of Funding Availability (NOFA) for development, preservation or*

rehabilitation of affordable rental housing, within three years of the proposal selection date by the city, may also be awarded project-based vouchers by Letter of invitation. All PBV awards must be approved by the OHA Board of Commissioners.

OHA selection of projects under MTW authority without engaging in a competitive process

OHA may select projects under MTW authority without engaging in a competitive process. Projects that may be selected for project-based voucher assistance without engaging in a competitive process include:

- Properties owned directly or indirectly by OHA that are not Public Housing;
- OHA Public Housing modernization activities including the replacement on a one for one basis, of public housing units that are being permanently removed from the Public Housing program inventory.

A PBV award to projects selected without engaging in a competitive process must be approved by the OHA Board of Commissioners.

PHA-owned Units [24 CFR 983.51(e) and 983.59, Notice PIH 2015-05, and FR Notice 1/18/17]

OHA owned units may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the OHA-owned units were appropriately selected based on the selection procedures specified in the OHA administrative plan. If OHA selects a proposal for housing that is owned or controlled by the OHA, OHA must identify the entity that will review OHA's proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of OHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by OHA and a HUD-approved independent entity. The initial contract rent must be approved by ~~an~~the independent entity. In addition, housing quality standards inspections must be conducted by the independent entity or a third party vendor contracted by the independent entity.

The independent entity that performs these program services may be the unit of general local government for ~~the PHAOHA~~ jurisdiction (unless ~~the PHAOHA~~ is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

OHA Policy

OHA will use an independent entity approved by HUD, to perform required rent determinations and housing quality standards inspections in PBV program units where OHA has an identity of interest in the property.

A state-certified appraiser's market rent study used to determine initial contract rents for PBV program units may be based on a geographical area covering multiple sites located within that geographical area.

OHA will only compensate the independent entity from OHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). OHA may not use other program receipts to compensate the independent entity for their services. OHA's independent entity may not charge the family any fee for the appraisal or the services provided by the independent entity.

PHA Notice of Owner Selection [24 CFR 983.51(d)]

~~The P~~OHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

OHA Policy

OHA will give prompt written notification to the selected owner of a PBV program award. The award notice will include~~d~~ the number of vouchers awarded by bedroom size and state a deadline by which the project owner must enter into an agreement to enter into HAP or a HAP contract to provide PBV assistance for the awarded units in the project. OHA will also notify in writing all owners that submitted proposals that were not selected.

In addition, OHA will publish public notice of the selection of PBV proposals on the OHA website~~s~~. The announcement will include the name of the owner/project and the number of project-based vouchers that were awarded for the PBV program. OHA will post the public notice of selection of PBV proposals on the OHA website~~for a period of not less than 30 days~~.

17-II.C. HOUSING TYPE [24 CFR 983.52]

~~The P~~

~~O~~HAs may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of ~~O~~PHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation~~-~~ began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

OHA will decide what housing type, new construction, rehabilitation or existing housing, will be used to develop project-based housing. OHA's choice of housing type will be reflected in its solicitation for proposals.

17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS

Ineligible Housing Types [24 CFR 983.53]

~~The PHAOHA~~ may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; and manufactured homes. In addition, ~~the PHAOHA~~ may not attach or pay PBV assistance for a unit occupied by an owner and ~~the PHAOHA~~ may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

Subsidized Housing [24 CFR 983.54]

~~APOHA~~ may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- (a) A public housing dwelling unit;
- (b) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based rental assistance);
- (c) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);
- (d) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- (e) A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z–1). However, ~~the PHAOHA~~ may attach assistance to a unit subsidized with Section 236 interest reduction payments;
- (f) A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, ~~the PHAOHA~~ may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);
- (g) A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);
- (h) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);
- (i) Section 202 supportive housing for the elderly (12 U.S.C. 1701q);

- (j) A Section 101 rent supplement project (12 U.S.C. 1701s);
- (k) A unit subsidized with any form of tenant-based rental assistance (as defined at 24 CFR 982.1(b)(2)) (e.g. , a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 *et seq.*);
- | (l) A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by ~~the PHAOHA~~ in accordance with HUD requirements. For this purpose, “housing subsidy” does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

~~Under MTW authority, OHA may determine property eligibility criteria, including types of units currently prohibited by Section 8 regulations, as well as shared living facilities. If the Agency chooses to use this authorization, it will provide a transition plan to both the affected residents and HUD prior to the end of the demonstration. This authorization waives certain provisions of Section 8(p) of the 1937 Act and 24 CFR 983.53-54 and Subparts H and M as necessary to implement the Agency's Annual MTW Plan.~~

OHA Policy (MTW)

OHA may allocate PBV assistance to the Special Housing types described in Chapter 15, based on HUD approved MTW activities. These special housing types include single room occupancy (SRO), group homes and shared housing. The MTW activity may alter program requirements by imposing additional participant obligations such as transfer restrictions, participation in available service programs, graduation requirements or term limits as described in the activity or specific program guidelines. Service providers may directly refer applicants to OHA for admission to targeted service enriched program units and maintain a waitlist for referral of future program applicants.

Additionally, to enhance the accessibility and the effectiveness of programs serving a special needs population, OHA may attach PBV assistance to units developed with Housing Opportunities of Persons with AIDS (HOPWA) or Mental Health Services Act (MHSA) Housing Program funding as long as the HOPWA or MHSA program funding does not duplicate any form of rental assistance for the family. PBV assistance awarded to HOPWA or MHSA program units may also be administered as Sponsor Based Housing if selected in response to an OHA invitation for proposals for Sponsor Based Housing.

17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, FR Notice 11/24/08,

[FR Notice 7/9/10, and FR Notice 6/25/14]

~~The PHAOHA~~ may provide PBV assistance only in accordance with HUD subsidy layering regulations and other requirements.

The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

Subsidy layering requirements do not apply to existing housing. A further subsidy layering review is not required for new construction or rehabilitation if HUD's designee has conducted a review that included a review of PBV assistance in accordance with the PBV subsidy layering guidelines.

~~The PHAOHA~~ must submit the necessary documentation to HUD for a subsidy layering review. Except in cases of HAP contracts for existing structures, or if such reviews have been conducted by the applicable state and local agencies (defined by HUD as qualified housing credit agencies, or HCAs) noted above, ~~the PHAOHA~~ may not enter into an agreement to enter into a HAP contract or

a HAP contract until HUD, or an independent entity approved by HUDA HUD-approved housing credit agency (HCA), has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements. However, in order to satisfy applicable requirements, HCAs must conduct subsidy layering reviews in compliance with the guidelines set forth in the *Federal Register* notice published July 9, 2010.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT

25 Percent per Project Cap [24 CFR 983.56]

In general, OHA may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in the project.

Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17]

Exceptions are allowed and PBV units are not counted against the 25 percent or 25-unit per project cap if:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project

- The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates
 - For these projects, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services. Projects where these caps were implemented prior to HOTMA may continue to use the former exemptions and may renew their HAP contracts under the old requirements, unless the PHA and owner agree to change the conditions of the HAP contract. However, this change may not be made if it would jeopardize an assisted family's eligibility for continued assistance in the project.

Supportive Services

OHA must include in the OHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. The project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit, although the family must be eligible to receive the supportive services. It is not necessary that the services be provided at or by the project, but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. A PHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

Projects not Subject to a Project Cap [FR Notice 1/18/17]

PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD are exempt from the project cap. In other words, 100 percent of the units in these projects may receive PBV assistance. To qualify for the exception, the unit must:

- Be covered by a PBV HAP contract that first became effective on or after 4/18/17; and
- In the five years prior to the date OHA either issued the RFP under which the project was selected or the PHA selected the project without competition, the unit met at least one of the two following conditions:
 - The unit received Public Housing Capital or Operating Funds, Project-Based Rental Assistance, Housing for the Elderly (Section 202), Housing for Persons with disabilities (Section 811), the Rental Supplement program.
 - The unit was subject to a rent restriction as a result of one of the following HUD loans or insurance programs: Section 236, Section 221(d)(3) or (d)(4) BMIR, Housing for the Elderly (Section 202), or Housing for Persons with Disabilities (Section 811)

Units that were previously receiving PBV assistance are not covered by the exception. Both existing and rehabilitation units are eligible for this exception. Newly constructed units qualify if they meet the definition of *replacement unit* described in FR Notice 1/18/17.

Promoting Partially-Assisted Projects [24 CFR 983.56(c)]

OHA may establish local requirements designed to promote PBV assistance in partially assisted projects. A *partially assisted project* is a project in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

OHA may establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-family building. OHA may also determine not to provide PBV assistance for excepted units, or the PHA may establish a per-project cap of less than 25 percent.

OHA Policy (MTW)

Under MTW authority, [Activity #12-01](#), will not limit the number of total number of dwelling units in a project that will receive PBV assistance during the term of the PBV HAP contract and may provide PBV assistance for up to 100% of units within a project.

17-II.G. SITE SELECTION STANDARDS

Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR 983.57(b)]

OHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless OHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR 903 and the OHA administrative plan.

In addition, prior to selecting a proposal, OHA must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws,

[regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 CFR 982.401\(l\).](#)

OHA Policy

Under MTW authority, OHA will apply the following Site and Neighborhood Standards for the award of PBV assistance: OHA will comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and implementing regulations thereto, in determining the location of newly constructed or substantially rehabilitated unit-based housing assistance. OHA shall certify to HUD that HUD site and neighborhood selection requirements have been met; provided, however, that in lieu of the Site and Neighborhood Standards currently set forth in 24 CFR Section 941.202(b)-(d) and in 24 CFR Section 983.6, OHA will comply with the following requirements:

- a. Units may be located in OHA's jurisdiction, including within, but not limited to, the following types of urban areas: (i) an area of revitalization that has been designated as such by the City of Oakland, including Redevelopment Areas and Enhanced Enterprise Communities, (ii) an area where public housing units were previously constructed and were demolished, (iii) a racially or economically impacted area where the assisted units are part of an OHA strategy to preserve existing affordable housing, (iv) an area where the Authority is undertaking a HOPE VI or other HUD-funded, master-planned development, (v) an area where a needs analysis indicates that subsidized housing represents a low percentage of the total number of housing units, or, (vi) an area with a low concentration of public housing units where existing public housing units are being relocated.
- b. Conduct a housing needs analysis indicating that there is a real need for the housing in the area; and
- c. When project-based assistance will be used to develop or substantially rehabilitate six or more public housing units, OHA will: (i) consult with public housing residents through appropriate resident organizations and representative community groups in the vicinity of the subject property during the planning; (ii) advise current residents of the subject properties ("Residents") and public housing residents, by letter to resident organizations and by public meeting, of OHA's revitalization plan; and (iii) certify to HUD in its MTW Annual Report that the comments from Residents, public housing residents and representative community groups have been considered in the revitalization plan. Documentation evidencing that OHA has met the stated requirements will be maintained at the housing authority and submitted to HUD in its MTW Annual Report.

17-II.H. ENVIRONMENTAL REVIEW [24 CFR 983.58, ~~FR Notice 11/24/08~~]

The [PHAOHA](#) activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.). The [PHAOHA](#) may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

~~The PHAOHA~~ may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and ~~the PHAOHA~~, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

~~The PHAOHA~~ must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. ~~The PHAOHA~~ must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

PART III: DWELLING UNITS

17-III.A. OVERVIEW

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

~~Under MTW authority, OHA may determine property eligibility criteria, including types of units currently prohibited by Section 8 regulations, as well as shared living facilities. If the Agency chooses to use this authorization, it will provide a transition plan to both the affected residents and HUD prior to the end of the demonstration. This authorization waives certain provisions of Section 8(p) of the 1937 Act and 24 CFR 983.53-54 and Subparts H and M as necessary to implement the Agency's Annual MTW Plan.~~

17-III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101]

The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program.

The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

Lead-based Paint [24 CFR 983.101(c)]

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. ~~The PHAOHA~~ must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

17-III.D. INSPECTING UNITS

Pre-selection Inspection [24 CFR 983.103(a)]

OHA must examine the proposed site before the proposal selection date. ~~If the units to be assisted already exist, OHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, OHA may not execute the HAP contract until the units fully comply with HQS.~~

Pre-HAP Contract Inspections [24 CFR 983.103(b)]

Inspection of Existing Units

~~The If the units to be assisted already exist, OHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, OHA may not execute the HAP contract until the units fully comply with HQS unless OHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions.~~ P

Pre-HAP Contract Inspections [24 CFR 983.103(b); FR Notice 1/18/17]

~~OHA must inspect each contract unit before execution of the HAP contract. The PHAOHA may not enter into a HAP contract covering a unit until the unit fully complies with HQS unless OHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions.~~

OHA Policy

~~— OHA may enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions.~~

Turnover Inspections [24 CFR 983.103(c)]

Before providing assistance to a new family in a contract unit, ~~the PHAOHA~~ must inspect the unit. ~~The PHAOHA~~ may not provide assistance on behalf of the family until the unit fully complies with HQS.

Annual/Biennial Inspections [24 CFR 983.103(d), FR Notice 6/25/14]

At least once every 24 months during the term of the HAP contract, ~~the PHAOHA~~ must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS.

Turnover inspections are not counted toward meeting this inspection requirement.

If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, ~~the PHAOHA~~ must reinspect 100 percent of the contract units in the building.

OHA Policy

Under MTW Authority, OHA may elect to utilize HQS inspection protocols developed under MTW authority for tenant-based voucher assistance in lieu of the inspection requirements detailed above.

Other Inspections [24 CFR 983.103(e)]

~~The PHAOHA~~ must inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. ~~The PHAOHA~~ must take into account complaints and any other information coming to its attention in scheduling inspections.

~~The PHAOHA~~ must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting PHA supervisory quality control HQS inspections, ~~the PHAOHA~~ should include a representative sample of both tenant-based and project-based units.

Inspecting PHA-owned Units [24 CFR 983.103(f)]

In the case of PHA-owned units, the inspections must be performed by an independent agency designated by ~~the PHAOHA~~ and approved by HUD. The independent entity must furnish a copy of each inspection report to OHA and to the HUD field office where the project is located. OHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS

17-IV.A. OVERVIEW [24 CFR 983.151]

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance.

17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT

In order to offer PBV assistance in rehabilitated or newly constructed units, ~~the PHAOHA~~ must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(b)]. ~~The PHAOHA~~ may not enter into an Agreement if construction or rehabilitation has started after proposal submission [24 CFR 983.152(c)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing. In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and ~~the PHAOHA~~ agrees that upon timely completion of such development in accordance with the terms of the Agreement, ~~the PHAOHA~~ will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(a)].

OHA Policy

Under MTW Authority, OHA may modify the terms and content of the agreement to reflect conditions granted under MTW authority. OHA may also create its own Project-Based Voucher Program Agreement and Contract to be used for PBV assistance awarded as Sponsor Based Housing.

Content of the Agreement [24 CFR 983.152(d)]

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- 1. Site and the location of the contract units;
- 2. Number of contract units by area (size) and number of bedrooms and bathrooms;
- 3. Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- 4. Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- 5. An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- 6. Estimated initial rents to owner for the contract units;

- 7. Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by ~~the PHAOHA~~, specifications and plans. For new construction units, the description must include the working drawings and specifications.
- 8. Any additional requirements for quality, architecture, or design over and above HQS.

17-IV.C. CONDUCT OF DEVELOPMENT WORK

Labor Standards [24 CFR 983.154(b)]

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. ~~The PHAOHA~~ must monitor compliance with labor standards.

Equal Opportunity [24 CFR 983.154(c)]

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

Owner Disclosure [24 CFR 983.154(d) and (e)]

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

17-IV.D. COMPLETION OF HOUSING

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

Evidence of Completion [24 CFR 983.155(b)]

At a minimum, the owner must submit the following evidence of completion to ~~the PHAOHA~~ in the form and manner required by ~~the PHAOHA~~:

- Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

| At ~~the PHAOHA~~'s discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

OHA Policy

OHA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. The OHA will specify any additional documentation requirements in the Agreement to enter into HAP contract.

PHA Acceptance of Completed Units [24 CFR 983.156]

Upon notice from the owner that the housing is completed, ~~the PHAOHA~~ must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. ~~The PHAOHA~~ must also determine if the owner has submitted all required evidence of completion. If the work has not been completed in accordance with the Agreement, ~~the PHAOHA~~ must not enter into the HAP contract.

If ~~the PHAOHA~~ determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, ~~the PHAOHA~~ must submit the HAP-contract for execution by the owner and must then execute the HAP contract.

PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)

17-V.A. OVERVIEW

The PHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract must be in the form required by HUD [24 CFR 983.202].

OHA Policy

-Under MTW Authority, OHA may modify the terms and content of the HAP contract to reflect conditions granted under MTW authority. ~~OHA may also create its own Project Based Voucher Program Contract to be used for PBV assistance awarded as Sponsor Based Housing.~~

17-V.B. HAP CONTRACT REQUIREMENTS

Contract Information [24 CFR 983.203, FR Notice 11/24/08]

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, and any other information necessary to clearly identify the site and the building;
- The number of contract units in each project, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any project that will be set-aside for occupancy by qualifying families(e.g., senior, disabled, HOPWA, MHSA); and
- The initial rent to owner for the first 12 months of the HAP contract term.

Execution of the HAP Contract [24 CFR 983.204]

The PHA may not enter into a HAP contract until each contract unit has been inspected and the PHA has determined that the unit complies with the Housing Quality Standards (HQS).

Term of HAP Contract [24 CFR 983.205; FR Notice 1/18/17]

The PHA may enter into a HAP contract with an owner for an initial term of no less than one (1) year and no more than twenty (20) years. Additionally, for any PBV HAP contract that is still

within the initial term, OHA and the owner may mutually agree to extend the contract for up to the maximum initial term of 20 years.

OHA may further extend the HAP contract beyond 20 years from the end of the initial term as long as the following conditions are met:

- a) OHA must determine such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities;
- b) This determination must be made no earlier than 24 months prior to the expiration of the HAP contract;
- c) The term of the new extension may not exceed 20 years.

The maximum combined terms of the HAP contract may not exceed 40 years.

OHA Policy

The term of a PBV HAP contract will be negotiated with the owner on a case-by-case basis. The HAP contract will include language noting that the funding of the contract is subject to the availability of Appropriations. OHA may enter into a new PBV HAP contract with an owner with an initial term of up to twenty (20) years and for HAP contracts that are still in the initial term may extend the initial term up to a maximum initial term of 20 years by mutual consent, and then may subsequently agree to extend the contract for up to 20 years. The maximum term of the HAP contract in that instance (initial term and subsequent extensions) may not exceed 40 years.

HAP Contract Renewal Agreement

OHA may enter into a renewal agreement with the owner at the time it enters into the initial agreement for a housing assistance payment contract or at any time thereafter that is before the expiration of the housing assistance payment contract. A renewal agreement may commit an extension for a renewal term of up to twenty (20) years or the maximum allowed in accordance with federal regulations if it is greater than 20 years. A renewal agreement will include language noting that the funding of the contract renewal is subject to the availability of Federal Appropriations.

Termination by PHA [24 CFR 983.205(c); [FR Notice 1/18/17](#)]

The HAP contract must provide that the term of [the PHAOHA](#)'s contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by [the PHAOHA](#) in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

[In times of insufficient funding, HUD requires that OHA first take all cost-saving measures prior to make payments under existing PBV HAP contracts.](#)

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, ~~the PHAOHA~~ may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

Termination by Owner [24 CFR 983.205(d)]

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to ~~the PHAOHA~~. In this case, families living in the contract units must be offered tenant-based assistance.

Statutory Notice Requirements: Contract Termination or Expiration [24 CFR 983.206; FR Notice 1/18/17; Notice PIH 2017-21]

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify ~~the PHAOHA~~ and assisted tenants of the termination. The notice

must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require. For families who wish to remain at the property, the HCV tenant-based assistance would not begin until the owner's required notice period ends.

Upon termination or expiration of the contract without extension, an assisted family may elect to remain in its unit and use the assistance previously provided under the contract, as long as the unit meets HUD's housing quality standards and the rent for the unit is reasonable. In such a circumstance, the family may choose to move or to remain in the unit. If the family remains, it will pay its required share of the rent in addition to the amount, if any, by which the gross rent exceeds the applicable payment standard. A family that remains in its unit with continued tenant-based HCV assistance must pay the total tenant payment (determined under 24 CFR part 5 subpart F) and any additional amount by which the unit rent exceeds the applicable payment standard.

Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to OHA HCV tenant-based program, and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income. The family does not count toward OHA's income-targeting requirements at 24 CFR §982.201(b)(2)(i).

Effective date of HCV HAP and family leases.

The transition from PBV HAP units to HCV HAP units will require OHA and owner to plan to assure continued payments for families under lease and continued payments to the owner of units under HAP. The following requirements apply:

- (1) OHA may execute an HCV HAP contract before the PBV HAP contract terminates, but the HCV HAP contract may not be effective prior to the PBV contract termination or expiration date.
- (2) OHA may not commence the tenant-based HCV housing assistance payment to an owner until the HCV tenant-based HAP contract has been executed.
- (3) The HCV HAP contract may not be executed before OHA approves the assisted tenancy in accordance with 982.305. An HCV HAP contract for a family must be executed no later than 60 calendar days from the start of the family's lease. As long as the HCV HAP contract is executed during the 60-day grace period, once it has been executed, OHA may pay the owner retroactively to the start date of the family's lease term. (4) If the HCV HAP contract has a different rent than did the PBV HAP contract, and the new rent is determined by OHA to be reasonable, then OHA will use the new gross rent to calculate the family's HCV HAP going forward. The family will be responsible for paying the new family rent to owner starting from the effective date of the HCV HAP contract.

Remedies for HQS Violations [24 CFR 983.208(b)]

~~The PHAOHA~~ may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If ~~the PHAOHA~~ determines that a contract does not comply with HQS, ~~the PHAOHA~~ may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

OHA Policy

OHA will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

17-V.C. AMENDMENTS TO THE HAP CONTRACT

OHA Policy

~~Under MTW Authority, OHA may amend the terms and content of the HAP contract to reflect conditions granted under MTW authority.~~

Substitution of Contract Units [24 CFR 983.2076(a) as amended by MTW]

At OHA's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Before any such substitution can take place, OHA must inspect the proposed unit and determine the reasonable rent for the unit.

OHA Policy (MTW)

OHA may substitute (float) a project-based-voucher contract unit for a different unit in the projects at any time during the initial term or any extension term of the HAP contract. The substituted unit does not have to be a unit with the same number of bedrooms.

Addition of Contract Units [24 CFR 983.207(b) as amended by MTW]

OHA and owner may amend the HAP contract to add additional PBV contract units in

~~projects that already have a HAP contract without having to fulfill the selection requirements found at 24 CFR 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, OHA must submit to the local field office information outlined in FR Notice 1/18/17. OHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project. At OHA's discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per project and on the overall size of OHA's PBV program, a HAP contract may be amended during the initial term, or any renewal term of the HAP contract to add additional PBV units in the same project. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.~~

OHA Policy

Under MTW authority, OHA is not subject to program or project limits.

OHA will consider adding contract units to the HAP contract when ~~the PHAOHA~~ determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families); and

Voucher holders are having difficulty finding units that meet program requirements.

Under MTW authority, the HAP contract may be amended at any time during the initial term of the HAP contract, or any renewal term of the HAP contract.

Suspend PBV Awarded Contract Units for applicants with Tenant-Based Assistance

At the option of the project owner and tenant, an applicant that has OHA administered tenant-based Section 8 assistance may utilize their tenant-based assistance (e.g. HCV, TPV, VASH, Mainstream etc.) in the PBV unit. OHA will suspend the PBV award to the unit in the project's HAP contract until the unit becomes available for the next eligible applicant during the term of the HAP contract or any approved extensions.

17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES

[24 CFR 983.207(b) and 983.302(e)]

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.210]

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
 - The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
 - Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by the PHAOHA, and the lease is in accordance with the HAP contract and HUD requirements;
 - To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
 - The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
 - The amount of the HAP the owner is receiving is correct under the HAP contract;
 - The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
 - Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and
- The family does not own or have any interest in the contract unit. (does not apply to family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

17-V.F. ADDITIONAL HAP REQUIREMENTS

Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.208(a)]

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHAOHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

The POHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

OHA Policy

OHA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. OHA will specify any special design standards or additional requirements in the invitation for PBV proposals, the agreement to enter into HAP contract, and the HAP contract.

Vacancy Payments [24 CFR 983.352(b)]

At the discretion of ~~the PHAOHA~~, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by ~~the PHAOHA~~ and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

~~Under MTW authority, OHA may determine a damage claim and/or vacancy loss policy and payment policy for occupied units that differ from the policy requirements currently mandated in the 1937 Act and its implementing regulations. Damage and vacancy authority are subject to state and local laws. This authorization waives certain provisions of Section 8(o)(9) of the 1937 Act and 24 CFR 982.311 as necessary to implement the Agency's Annual MTW Plan.~~

OHA Policy

The OHA will decide ~~on a case-by-case basis~~ if OHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the basis of the vacancy payment and the period for which the owner will qualify for these payments.

The amount of vacancy loss payments may not exceed two full calendar months after the move out month. The owner may also retain the HAP payment for the entire month in which the family moved out.

PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS

17-VI.A. OVERVIEW

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

~~MTW process and procedures may conflict with HUD regulatory requirements. Where no MTW policy or procedure exists, then standard Section 8 rules and regulations apply.~~

17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]

~~OHA may select families for the PBV program from those who are participants in the tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.~~

OHA Policy

OHA may select families for the PBV program from those who are:

- 1. Participants in a OHA's tenant-based voucher program,
 - 2. Residing in the proposed PBV contract unit on the date the proposal is awarded,
 - 3. From those who have ~~applied~~been selected for admission to OHA's tenant-based voucher program,
 - 4. From those who have applied for housing at a PBV site where a separate site-based waiting list has been established specifically for the tenanting of units within the development.
 - 5. From those who are in-place public housing conversion families in good standing.
- +6. Graduates from an OHA short-term transitional housing program with supportive services, including PACT, Building Bridges and any other approved program.

For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be re-determined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and ~~the PHAOHA~~, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to ~~the PHAOHA~~'s collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The

PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

~~Under MTW Authority, OHA may adopt and implement reasonable policy for verifying family income and composition and for determining resident eligibility that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. This authorization waives certain provisions of 24 CFR 982.516 and 982 Subpart E, as necessary to implement the Agency's Annual MTW Plan.~~

OHA Policy

A family selected from an owner administered site-based waiting list must be referred to OHA for determination of the family's eligibility for the PBV program. To minimize duplication of the applicant qualification process, if a family's income was verified by the owner as a requirement of participation in another low-income program committed to the project, OHA may use copies of the family information regarding income, expenses and family composition including certification of 3rd party verifications collected by the owner, for determination of family eligibility for the PBV program. **Any family documentation received from a PBV site owner must be dated within 120 days of a family's application date.** OHA may elect to re-verify any information as needed. Families selected for the PBV program must meet all OHA's screening criteria (e.g., income, criminal background, etc.) prior to receiving a project-based assistance.

In-Place Families

An eligible family residing in a proposed PBV contract unit on the date the proposal is awarded by the PHA is considered an "in-place family." These families are afforded protection from displacement under the PBV program.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the PBV program.

OHA Policy (MTW)

If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is awarded, the in-place family must be referred to the OHA for determination of eligibility.

The owner may:

- Relocate the family to an appropriately sized PBV unit within the development, or
- Place the family on the PBV site-based waiting list for an appropriate sized unit.

In accordance with MTW Activity #10-05, OHA, a landlord, or a management agent may allow an exception to this policy and admit a family in the wrong sized unit if the owner agrees to accept a PBV contract rent that does not exceed the OHA subsidy (voucher payment) standard approved for the in-place family. (see policy 17-VII.C. MOVES)

Public Housing Conversions/Dispositions

In-place public housing conversion families are continuously assisted applicants since the family is currently receiving assistance under a 1937 Housing Act program (24 CFR 982.201(d)(1)).

The family is therefore not subject to the new admissions criteria for program eligibility and admission to the Section 8 PBV program.

Under MTW authority, an in-place public housing conversion family may be admitted as a Section 8 PBV program participant. If an in-place public housing conversion family is admitted directly to the PBV program, the family is exempt from the 12 month minimum stay requirement and may immediately request to move with continued assistance under the Section 8 MTW Housing Choice Voucher program.

In-place public housing conversion families may also be admitted by Special Admission to the Housing Choice Voucher program if HUD has awarded tenant protection funding for specifically-named families living in specified units (Section 4-III.B.).

OHA Policy

An in-place public housing conversion family that is not in an appropriately sized unit when the development is selected for conversion will be admitted to the Section 8 program with HUD awarded tenant protection funding.

A family occupying a unit awarded PBV assistance (see 17-V.C. Suspend PBV Awarded Contract Units for applicants with Tenant-Based Assistance suspended), with a tenant-based assistance is subject to all policies applicable to a PBV assisted family occupying a wrong size unit, based on the PHA's subsidy standards for PBV program units, or a unit with accessibility features that the family does not require (See Section 17-VII,C – Moves).

Transitional/Conditional Housing Programs [OHA MTW Annual Plan]

Under MTW AuthorityActivity #11-05, OHA may develop and adopt new short-term transitional housing programs in partnership with supportive services provided by local community-based organizations or other local government agencies. These programs, which include comprehensive supportive services, operate under a Memorandum of Understanding (MOU) executed between OHA, other local government agencies, and/or third party service providers. OHA may administer these units under the programs such as LHAP PACT or Building Bridges CalWORKS Program and successful participants may be eligible to "graduate" and transfer be admitted to OHA's Public Housing, Housing Choice Voucher or the Project-based Voucher program(s), subject to funding availability and availability of an appropriate unit size for the family.

OHA Policy

Under MTW authority, graduating participants of transitional housing programs, including the MOMS program, may be admitted to the Project-based Voucher (PBV) program under Special Admissions criteria (Section 4-III.B.).

Neighborhood Orientation Workshop (MTW)

The Neighborhood Orientation Workshop is an MTW initiative which is intended to provide new Section 8 Program participants with access to information needed to become successful tenants and responsible members of their community. OHA will utilize a third party contractor to conduct the workshops. The third party contractor will be selected based on their knowledge of the local market area and their expertise in marketing, outreach, communication, popular education, and other successful strategies for working with low-income households and individuals. Upon completion, attendees will receive a certificate of completion.

OHA Policy

The Head of Household in a Project Based Voucher program unit (including all public housing conversion families), must attend a Neighborhood Orientation Workshop, as a part of the Section 8 briefing process (see Section 5-I.B.) prior to being issued an HCV tenant-based voucher. All other responsible adult family members in the applicant family household will be encouraged, but are not required to attend a workshop session. A Project-Based Voucher program ~~or~~ ~~Public Housing conversion~~-family will not be allowed to move with tenant based HCV assistance until the Head of Household has attended a Neighborhood Orientation Workshop.

An exception to this policy will be granted if the participant family has attended a Neighborhood Orientation Workshop (or comparable OHA workshop) within the last five (5) years.

Other exceptions will be considered on a case-by-case basis subject to the approval by the Director of Leased Housing and for circumstances involving a reasonable accommodation for a person with a disability, upon approval by the Reasonable Accommodation Compliance Committee.

17-VI.C. ORGANIZATION OF THE WAITING LIST[\[24 CFR 983.251\(c\); MTW Annual Plan\]](#)

~~Under MTW authority, OHA is authorized to determine waiting list procedures, tenant selection procedures and criteria and preferences, including authorizing vouchers for relocation of witnesses and victims of crime that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. This authorization waives certain provisions of Sections 8(o)(6), 8(o)(13)(J) and 8(o)(16) of the 1937 Act and 24 CFR 982 Subpart E, 982.305 and 983 Subpart F as necessary to implement the Agency's Annual MTW Plan.~~

~~OHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. OHA may also merge the PBV waiting list with a waiting list for other assisted housing programs. If OHA chooses to offer a separate waiting list for PBV assistance, it must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.~~

If OHA decides to establish a separate PBV waiting list, it may use a single waiting list for the whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

OHA Policy

Under MTW AuthorityActivity #06-01, OHA may authorize owner administered site-based waiting lists for individual buildings, projects or group of projects that receive PBV assistance. The PBV waiting list may be combined with the a site-based waiting list for public housing units, other affordable non-section 8 units, or units set aside for special needs populations in the development. The waiting list may come from outreach efforts conducted by the property owner/manager. In creating the PBV site-based waiting list, the owner/manager must comply with OHA's marketing outreach policies (see Sections 4-II.C and 4-II.D.) when advertising the availability of project-based voucher assisted units. The owner must notify OHA in advance of reopening the waiting list. OHA will post notification of the opening of a site-based waiting list used for tenanting PBV units, on the OHA web-site.

A property owner/manager may, but is not required to directly notify families on the OHA HCV tenant-based voucher waiting list of the opening of a PBV site-based waiting list. If requested, OHA will provide the owner/manager with a mailing list of families currently on the OHA HCV tenant-based voucher waiting list.

- A family that is on the OHA HCV tenant-based voucher waiting list may apply in response to owner outreach efforts and be placed on a PBV site-based waiting list.
- A family's placement on one or more PBV site-based waiting lists does not impact the family's position on the OHA HCV tenant-based voucher waiting list.
- A family's refusal to accept a PBV unit, owner denial, or removal from a project-based voucher site-based waiting list does not jeopardized the family's position on the OHA tenant-based voucher waiting list, see also 17-VI.E.

A family may only be removed from the OHA tenant-based voucher waiting list if they are selected and housed under the OHA project-based voucher program.

Owner developers awarded project-based voucher units must submit the following plans to OHA for review and approval prior to execution of an AHAP or HAP contract:

- Marketing Plan to describe marketing and outreach activities;
- Waiting List Management Plan which includes information related to accepting applications, random lottery procedures, procedures for rank order assignment and record keeping;

In approving the Waiting List and Tenant Selection Plans, OHA may require preferences up to and including an absolute preference for a public housing or Section 8 family that needs to be relocated. A family may need to be relocated to another PBV unit under certain circumstances such as:

- Over-Housed or Under-Housed

- Current unit removed from PBV Contract
- High-Priority Relocation where there is a verified medical problems of a serious or life-threatening nature or a verified threat of physical harm or criminal activity specifically directed to the family
- Reasonable Accommodation

17-VI.D. SELECTION FROM THE WAITING LIST AND DETERMINING UNIT SIZE [24 CFR 983.251(c)]

Applicants who will occupy units with PBV assistance must be selected from the applicable waiting list. OHA's waiting list. OHA may establish selection criteria or preferences for occupancy of particular PBV units. OHA may place families referred by the PBV owner on its PBV waiting list.

Income Targeting [24 CFR 983.251(c)(6)]

At least 75 percent of the families admitted to OHA's tenant-based and project-based voucher programs during the fiscal year from the waiting list must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

Units with Accessibility Features [24 CFR 983.251(c)(7)]

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, OHA must first refer families who require such features to the owner.

OHA Policy

Applicants who will occupy units with PBV assistance must be selected from:

- A PBV owner administered site-based waiting lists authorized by OHA, or
- OHA's HCV tenant based voucher waiting list.

OHA may establish selection criteria or preferences for occupancy of particular PBV units. Under MTW authority with approval from the Executive Director on a case by case basis, OHA may allow inter-program moves and transfers between the public housing, Housing Choice Voucher, or Project-based Voucher programs, if there are PBV units or HCV available and the resident is eligible for the relevant program. OHA may also allow participants of local, non-traditional programs to transfer to the PBV program provided that the family has met the program guidelines specified in the local program. This policy is authorized under Attachment C, Section D.4. of the Amended and Restated Moving to Work Agreement.

Preferences [24 CFR 983.251(d), FR Notice 11/24/08]

OHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. OHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B. above.

OHA may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that preference is consistent with the MTW Annual Plan. OHA may not, however, grant a preference to a person with a specific disability. [FR Notice 1/18/17].

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If OHA has projects with “excepted units” for elderly families or supportive services, OHA must give preference to such families when referring families to these units [24 CFR 983.261(b); FR Notice 1/18/17].

OHA Policy

A PBV site-based waiting list may use the same selection preferences that are used by OHA for the HCV tenant-based voucher program or may establish selection criteria or preferences independently for occupancy of particular units in a PBV development.

OHA may also refer a family to an OHA contracted PBV development where the owner is authorized to administer a PBV sited-based waiting list. The owner must provide the family with absolute preference for the next available appropriately-sized PBV assisted unit. (See Section 17-VII.C (Moves- Overcrowded, Under-Occupied, and Accessible Units). A family granted an absolute preference to move is still subject to owner screening requirements and offer of a PBV assisted unit (see 17-VI.E. OFFER OF PBV ASSISTANCE).

PBV Site-Based Waiting List Oversight and Auditing

OHA Policy

OHA will perform or witness any random lottery and/or rank order assignments the owner uses to create or when reopening a PBV site-based waiting list. A hard copy original (or a read-only electronic version) of the site-based waiting list will be kept on file at the OHA office.

OHA will audit site-based waiting list after the initial lease up and any time during the duration of the HAP contract. OHA will review waiting list management and tenant selections to insure that written procedures and preference were followed in selecting tenants for PBV assisted units.

Determining Family Unit Size for Project Based Voucher Assisted Units ([24 CFR 983.253](#))(subject to MTW authorization)

The contract unit leased to each family must be appropriate for the size of the family under OHA's subsidy standard.

OHA Policy

Under MTW authorityactivity #10-05, OHA may establish a separate Project Based Voucher Program occupancy standard table that will determine the appropriate number of bedrooms needed for families of different sizes and compositions. PBV program occupancy standards may differ from the occupancy standards used for determining the voucher size for applicant and participant families in the tenant based, Housing Choice Voucher Program (5-II.B.).

When PBV assistance is attached to units developed or rehabilitated with other state or locally administered affordable housing funds, the occupancy standards applicable to those other programs may differ from the subsidy standard used for the PBV program. This creates certain circumstances whereby a family of a particular size or composition, will qualify for a specific unit that was developed with Tax Credit (LIHTC) or HOME program funding, but is not eligible for PBV assistance in that same sized unit. OHA may adjust the applicable PBV program subsidy standard at certain PBV developments or for the PBV program in its entirety to increase access and expand housing opportunities for participants.

OHA Policy

For Project Based Voucher assisted units, the occupancy standard will be the same as the tenant-based subsidy standard unless the unit qualifies under MTW activity #10-05, or the project owner has an OHA approved site selection plan that allows an alternative occupancy standard.

PBV Unit Size	Minimum Number in Household	Maximum Number in Household
SRO	1	4
0-BR	1	2
1-BR	1	3
2-BR	2	5
2-BR CNV	2	6
3-BR	4	7
4-BR	6	9
5-BR	8	11

The following requirements apply when OHA determines the family unit size:

- The PBV program occupancy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The PBV program occupancy standards must be consistent with space requirements under the housing quality standards.
- The PBV program occupancy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family member who is temporarily away from the home to attend school is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
- Any live-in aide (approved by OHA to reside in the unit, see 3-I.M.) must be counted in determining the family unit size.
- Live-in aides will be allocated a separate bedroom.

If the family moves from the PBV assisted unit and converts to the HCV tenant based program assistance, the family's HCV voucher size will be based on the applicable HCV program subsidy standard (see 5-II.B.).

Unit Size Exceptions

~~In determining family unit size for a particular family, OHA may grant an exception to its established subsidy standards if OHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances~~

~~Reasons may include, but are not limited to:~~

- ~~A need for an additional bedroom for medical equipment~~
- ~~A need for a separate bedroom for reasons related to a family member's disability, medical or health condition~~

~~The family must request any exception to the subsidy standards in writing. The request must explain the need or justification for a larger family unit size, and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source, unless the disability and the disability-related request for accommodation is readily apparent or otherwise known.~~

~~OHA will notify the family of its determination within 15 business days of receiving the family's request. If a participant family's request is denied, the notice will inform the family of their right to request an informal hearing.~~

17-VI.E. OFFER OF PBV ASSISTANCE

Refusal of Offer [24 CFR 983.251(e)(3)]

| ~~The PCHA~~ is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refuse to list the applicant on the waiting list for tenant-based voucher assistance;
- Deny any admission preference for which the applicant qualifies;
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under ~~the PHAOHA~~'s selection policy;
- Remove the applicant from the tenant-based voucher waiting list.

Disapproval by Landlord [24 CFR 983.251(e)(2)]

If a PBV owner rejects a family for admission to the owner's units, such rejection will not affect the family's:

- Position on OHA tenant-based voucher waiting list
- Occupancy in their current PBV assisted unit

Acceptance of Offer [24 CFR 983.252]

A family that is also on OHA HCV tenant-based voucher waiting list will be removed from the HCV list if they accept an offer and are housed under the OHA project-based voucher program.

Family Briefing [24 CFR 983.252]

| When a family accepts an offer for PBV assistance, ~~the PCHA~~ must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, ~~the PCHA~~ must provide a briefing packet that explains how ~~the PCHA~~ determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

Persons with Disabilities

| If an applicant family's head or spouse is disabled, ~~the PCHA~~ must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, ~~the PCHA~~ must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

Persons with Limited English Proficiency

| OHA will take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

17-VI.F. OWNER SELECTION OF TENANTS

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease.

Leasing [24 CFR 983.253(a)]

During the term of the HAP contract, the contract unit leased to the family must be the appropriate size unit for the size of the family, based on the OHA's subsidy standards. Exceptions will be considered on a case by case basis for in-place families at initial lease up (see 17-VI.B. In-Place Families).

Filling Vacancies [24 CFR 983.254(a)]

The owner must promptly notify OHA of any vacancy or expected vacancy in a contract unit.

After receiving such notice, OHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. OHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy. The unit must be filled by a referral from OHA or the next eligible family on the site-based waiting list.

OHA Policy

The owner must notify OHA in writing (mail, fax, or e-mail) within 10 business days of learning about any vacancy or expected vacancy.

OHA will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner.

An applicant that has OHA administered tenant-based Section 8 assistance may utilize their tenant-based assistance (e.g. HCV, VASH, Mainstream etc.) in the PBV unit. OHA will suspend the PBV award to the unit in the project's HAP contract until the unit becomes available for the next eligible applicant during the term of the HAP contract or any approved extensions. (see 17-V.C. Suspending Contract Units for applicants with Tenant-Based Assistance)

Under the circumstances described in Section 17-VII.C (Moves- Overcrowded, Under-Occupied, and Accessible Units), OHA may refer a family to an OHA PBV development where the owner is authorized to administer a PBV site-based waiting list. The owner must provide the family with absolute preference for the next available appropriately sized PBV assisted unit. However, a family granted an absolute preference to move is still subject to owner screening requirements and offer of a PBV assisted unit (see 17-VI.E. OFFER OF PBV ASSISTANCE).

Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, the~~P~~OHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

OHA Policy

If any contract units have been vacant for 120 days, theOHA may give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. A reduction in the number of HAP contract units will be reviewed by OHA on a case by case basis. A unit may be allowed to remain vacant for over 120 days subject to good faith efforts by the owner to fill the vacancy. If theOHA decides to remove a unit by amending the HAP contract, OHA will provide the notice to the owner within 10 business days, after the 120th day of vacancy. The amendment to the

HAP contract will be effective on the 1st day of the month following the date of OHA's notice.

OHA will take steps to enforce the contract if it appears that the owner is maintaining vacancies intentionally to get out of contact obligations.

17-VI.G. TENANT SCREENING [24 CFR 983.255]

PQHA Responsibility

~~The~~ PQHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, ~~the~~ PQHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

OHA Policy

OHA will not conduct screening to determine a PBV applicant family's suitability for tenancy.

OHA must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by OHA) of the family's current landlord and any prior landlords.

In addition, OHA may offer the owner other information OHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. OHA must provide applicant families a description of OHA policy on providing information to owners, and OHA must give the same types of information to all owners.

OHA may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

OHA Policy

OHA will inform owners of their responsibility to screen prospective tenants, and ~~will provide~~ owners with the required known name and address information, at the time of the turnover HQS inspection or before. ~~The~~ ~~PHAOHA~~ will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

Owner Responsibility

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- 1. Payment of rent and utility bills;
- 2. Caring for a unit and premises;

- 3. Respecting the rights of other residents to the peaceful enjoyment of their housing;
- 4. Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- 5. Compliance with other essential conditions of tenancy.

PART VII: OCCUPANCY

17-VII.A. OVERVIEW

After an applicant has been selected from the site based waiting list, determined eligible by the OHA, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

17-VII.B. LEASE [24 CFR 983.256]

The tenant must have legal capacity to enter a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

Form of Lease [24 CFR 983.256(b)]

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

OHA Policy

OHA will not review the owner's lease for compliance with state or local law.

Lease Requirements [24 CFR 983.256(c)]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provided by the owner; and
- The amount of any charges for food, furniture, or supportive services.

OHA Policy

If a lease is executed for a unit with accessibility features that the family does not require, the lease agreement must contain language or a lease addendum notifying the family that they may be required to move to another unit (with continues assistance) if the unit is needed by a family that does require the features (Section 17-VIII.C.).

Tenancy Addendum [24 CFR 983.256(d)]

The tenancy addendum in the lease must state:

- 1. The program tenancy requirements;
- 2. The composition of the household as approved by OHA (the names of family members and any OHA-approved live-in aide);
- 3. All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

Initial Term and Lease Renewal [24 CFR 983.256(f)]

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g. month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

1. — The owner terminates the lease for good cause
2. — The tenant terminates the lease
3. — The owner and tenant agree to terminate the lease
4. — ~~The PHA~~ HA terminates the HAP contract
5. — ~~The PHA~~ HA terminates assistance for the family

Changes in the Lease [24 CFR 983.256(e)]

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give ~~the PHA~~ HA a copy of all changes.

The owner must notify OHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by OHA and in accordance with the terms of the lease relating to its amendment. OHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

Owner Termination of Tenancy [24 CFR 983.257]

The owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

Tenant Absence from Unit [24 CFR 983.256(g) and 982.312(a)]

The ~~owner lease~~ may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by OHA policy. ~~According to program requirements, the family's assistance must be terminated if they are absent from the unit for more than 180 consecutive days. PHA~~ HA termination of assistance actions due to family absence

from the unit are subject to 24 CFR 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

OHA Policy

Absent family members in PBV assisted units are subject to the same standards applicable to tenant-based voucher program participants as defined in Section 3-I.L. - ABSENT FAMILY MEMBERS.

Continuation of Housing Assistance Payments [24 CFR 982.258]

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by ~~the PHAOHA~~. After the 180-day period,

the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

OPHA Policy

Under MTW ~~Activity #10-02~~uthority, OHA extends the period before HAP contract termination and notification of family termination from the program from 6 to 24 months for family's where tenant rent equals the rent to owner. If a participating family receiving zero assistance experiences a change in circumstances after the initial 6 months and before the expiration of the 24 month period that would result in a HAP payment to the owner, the family must notify ~~the PO~~HA of the change and request an interim reexamination before the expiration of the 24 month period. This change cannot be due to a Prohibited Actions as detailed in Chapter 14, whereby family members voluntarily terminate employment for less than a 30-day period, establishing a pattern of reduced employment at the time of program termination.

Security Deposits [24 CFR 983.2598]

The owner may collect a security deposit from the tenant. OHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

OHA Policy

OHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner is subject to state and local law, regarding disposition of the security deposit. The OHA has no liability or responsibility for payment of any amount owed by the family to the owner.

17-VII.C. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.25960]

If ~~the POHA~~ determines that a family is occupying a wrong size unit, based on ~~the POHA~~'s subsidy standards for PBV program units, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, ~~the POHA~~ must promptly notify the family and the owner of this determination, and ~~the POHA~~ must offer the family the opportunity to receive continued housing assistance in another unit.

OHA Policy

OHA will notify the family and the owner of the family's need to move based on the occupancy in a wrong-size or accessible unit. OHA will offer the family the following types of continued assistance, in the following order, based on the availability of assistance:

- 1. A PBV assisted unit in the same building or project;
- 2. A PBV assisted unit at another PBV development administered by OHA where the owner has been authorized to administer a site-based waiting list for PBV assisted units. The family may be referred to an owner administered sited-based waiting list with absolute preference for the next available appropriately sized PBV assisted unit;
- 3. A Public Housing unit or;
- 4. MTW Housing Choice Voucher tenant-based assistance.

PHA termination of housing assistance payments.

(1) If ~~the POHA~~ offers the family ~~the opportunity for~~ another form of continued housing assistance that is not a tenant-based voucher, the family will be given 60 calendar days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not accept the offer, does not move out of the PBV unit within the 60-day time frame, or both, the PHAOHA will terminate the housing assistance payments for the wrong-sized or accessible unit, at the expiration of the 60 day period and remove the unit from the HAP contract.

The PHAOHA will make any exceptions necessary to the 60-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency.

(2) If ~~the POHA~~ offers the family ~~the opportunity to receive a~~ MTW Housing Choice Voucher ~~tenant-based rental assistance under the voucher program, the POHA may~~ must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHAOHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, OHA must remove the unit from the HAP contract.

~~If OHA offers the family a tenant-based voucher, OHA may terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by OHA).~~

OHA Policy

Under MTW ~~authority~~Activity #10-05, the owner and OHA may waive this requirement by including a provision in the PBV HAP contract whereby the owner and OHA, agree to allow families to continue a tenancy in a PBV assisted, under-occupied (wrong sized) unit subject to the owner accepting a lower contract rent for an extension term of not less than one year. The extension term is renewable and will be reviewed annually at the family's anniversary date thereafter. The lower rent will be based on the actual OHA subsidy standard determined for the family when the family's subsidy standard is lower than the actual PBV unit size. The lower rent for the unit will be determined by the approved PBV rent schedule for smaller sized unit in the development. If there is no PBV rent schedule for the unit size at the development, then rent will be established based on the lower of:

- The appropriate tenant-based (HCV) payment standard for the family size,
- The reasonable rent for the unit.

~~Under MTW Authority, OHA is authorized to adopt and implement any reasonable policy to establish payments, rents or subsidy levels for tenant-based assistance that differ from the currently mandated program requirement in the 1937 Act and its implementing regulations. OHA is authorized to adopt and implement any reasonable policies to calculate the tenant portion of rent that differ from the currently mandated program requirement in the 1937 Act and its implementing regulations. This authorization waives certain provisions of Section 8(o)(1), 8(o)(2), 8(o)(3), 8(o)(10), and 8(o)(13)(H)-(I) of the 1937 Act and 24 CFR 982.508, 982.503 and 982.518, as necessary to implement the Agency's Annual MTW Plan.~~

Family Right to Move [24 CFR 983.261]

The family may terminate the assisted lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to ~~the PHAOHA~~. If the family wishes to move with continued tenant-based assistance, the family must contact ~~the PHAOHA~~ to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, ~~the PHAOHA~~ is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, ~~the PHAOHA~~ must give the family priority to receive the next available opportunity for continued tenant-based assistance in accordance with PHA policy.

OHA Policy

In accordance with MTW Activity #11-02 and Activity #10-09, a family residing in a PBV unit may request a tenant-based voucher after occupying the PBV unit for at least two years (24 months). A household must complete the first 24 months of occupancy in

the assisted PBV unit before it is eligible to request to move with a tenant-based voucher. If the family moves or terminated the PBV assisted tenancy before the end of the 24 months of occupancy, the family relinquishes the opportunity to request any tenant-based assistance. If no tenant-based Housing Choice Voucher is immediately available, the eligible PBV household may be added to the transfer waitlist.

To preserve the status of the Section 8 tenant-based waiting list, the OHA must issue at minimum, one (1) Section 8 MTW Housing Choice Voucher the next eligible family on the tenant-based voucher waiting list, for each HCV that is issued to a project-based voucher family that is requesting to move with continued tenant-based assistance under the HCV program. If no tenant-based vouchers are being issued, OHA will place the eligible PBV transfer family on a waiting list (if open) for the next available voucher based on the date and time of the family's request.

Emergency Transfers under VAWA [Notice PIH 2017-08]

Except where special consideration is needed for the project-based voucher program, OHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4). HUD requires that OHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

OHA Policy

When the victim of domestic violence, dating violence, sexual assault, or stalking has lived in the unit for less than one year, OHA will provide several options for continued assistance.

OHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where OHA has PBV units. OHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for a transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in OHA's public housing program. Such a decision will be made by OHA based on the availability of tenant-based vouchers and/or vacancies in other units. Such families must be selected from the waiting list for the applicable program.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, OHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where OHA has PBV units. OHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to OHA's public housing program.
OHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking as part of the public housing ACOP in order to expedite this process.

17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.262]

OHA may not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless:

- The units are exclusively for elderly families
- Authorized by an MTW Activity
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
- The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates
 - For these projects, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

OHA Policy

Under MTW ~~authority~~Activity #12-01, OHA will not limit the number of total number of dwelling units (PBV Occupancy Cap) in a project that will receive PBV assistance during the term of the PBV HAP contract and may provide PBV assistance for up to 100% of units within a project.

PART VIII: DETERMINING RENT TO OWNER

17-VIII.A. OVERVIEW

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

~~Under MTW Authority, OHA is authorized to adopt and implement any reasonable policy to establish payments, rents or subsidy levels for tenant-based assistance that differ from the currently mandated program requirement in the 1937 Act and its implementing regulations. OHA is authorized to adopt and implement any reasonable policies to calculate the tenant portion of rent that differ from the currently mandated program requirement in the 1937 Act and its implementing regulations. This authorization waives certain provisions of Section 8(o)(1), 8(o)(2), 8(o)(3), 8(o)(10), and 8(o)(13)(H)-(I) of the 1937 Act and 24 CFR 982.508, 982.503 and 982.518, as necessary to implement the Agency's Annual MTW Plan.~~

17-VIII.B. RENT LIMITS [[24 CFR 983.301](#)]

OHA Policy

Except for certain tax credit units, the rent to owner must not exceed the lowest of the following amounts:

- The reasonable rent;
- The rent requested by the owner.
- The applicable Voucher Payment Standard for the unit based on the family's Subsidy Standard size minus any utility allowance.

Certain Tax Credit Units [24 CFR 983.301(c)]

For certain tax credit units, the rent limits are determined differently than for other PBV units. Different limits apply to contract units that meet all of the following criteria:

1. The contract unit receives a low-income housing tax credit under the Internal Revenue Code
2. of 1986;
3. The contract unit is not located in a qualified census tract;

4. There are comparable tax credit units of the same bedroom size as the contract unit in the
5. same project, and the comparable tax credit units do not have any form of rental assistance
6. other than the tax credit; and
7. The tax credit rent exceeds 110 percent of the fair market rent or any approved exception
8. payment standard;
9. For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:
 10. The tax credit rent minus any utility allowance;
 11. The reasonable rent; or
 12. The rent requested by the owner.

Definitions

A qualified census tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

Tax credit rent is the rent charged for comparable units of the same bedroom size in the project that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)]

OHA must determine reasonable rent in accordable with 24 CFR 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

- To correct errors in calculations in accordable with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 CFR 983.55
- If a decrease in rent to owner is required based on changes in the allocation of the responsibility for utilities between owner and tenant

If OHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

OHA Policy

OHA will elect within the HAP contract not to reduce rents below the initial level, with the exception of circumstances listed in 24 CFR 983.302(c)(2). If, upon redetermination of the rent

to owner, the reasonable rent would result in a rent below the initial rent, OHA will use the higher initial rent to owner amount.

Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]

When determining the initial rent to owner, the PHAOHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract.

When redetermining the rent to owner, the PHAOHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment stand amount for use in the PBV program.

Likewise, the PHAOHA may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

OHA Policy

The same utility allowance schedule and any utility allowance policies developed for the MTW tenant-based program, also apply to the project-based voucher program.

Use of Small Area FMRs (SAFMRs) [24 CFR 888.113(h)]

While small area FMRs (SAFMRs) do not apply to PBV projects, if OHA operates a tenant-based program under SAFMRs (either by HUD-designation or because OHA requested HUD approval to use SAFMRs) it may apply SAFMRs to all future PBV HAP contracts. If OHA adopts this policy, it must apply to all future PBV projects and OHA's entire jurisdiction. OHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if OHA subsequently changes its policy.

Further, OHA may apply SAFMRs to current PBV projects where the notice of owner selection was made on or before the effective dates of both the SAFMR designation and OHA administrative plan policy, provided the owner is willing to mutually agree to doing so and the application is prospective. OHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if OHA subsequently changes its policy. If rents increase as a result of the use of SAFMRs, the rent increase may not be effective until the first anniversary of the HAP contract.

OHA Policy

OHA will not apply SAFMRs to the PBV program.

Redetermination of Rent [24 CFR 983.302]

The PHAOHA must redetermine the rent to owner upon the owner's request or when there is a five percent or greater decrease in the published FMR.

Rent Increase

If an owner wishes to request an increase in the rent to owner from the PHAOHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must

| be in writing and in the form and manner required by the PHAOHA. The PHAOHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

OHA Policy

An owner's request for a rent increase must be submitted to OHA 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing. If a rent increase is approved, the adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

| The PHAOHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

Rent Decrease

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment, except where the PHAOHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

Notice of Rent Change

The rent to owner is redetermined by written notice by the PHAOHA to the owner specifying the amount of the redetermined rent. The PHAOHA notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

OHA Policy

OHA will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

PQHA-owned Units [24 CFR 983.301(g)]

For PQHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The PHAOHA must use the rent to owner established by the independent entity.

17-VIII.C. REASONABLE RENT [24 CFR 983.302]

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHAOHA, except where the PHAOHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

How to Determine Reasonable Rent

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, ~~the PHAOHA~~ must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

Initial Contract Rents

OHA Policy

The initial contract rents for all PBV HAP contracts will be based on a market rent study performed by an appraiser.

The appraiser's market rent study used to determine initial contract rents for PBV program units may be based on a geographical area covering multiple sites or specific unit types located within that geographical area.

Comparability Analysis

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by ~~the PHAOHA~~. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

OHA-owned Units

For OHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for OHA-owned units to OHA and to the HUD field office where the project is located.

Owner Certification of Reasonable Rent

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, ~~the PHAOHA~~ may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

Other Subsidy [24 CFR 983.304]

To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, a PHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding. For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- 1. An insured or non-insured Section 236 project;
- 2. A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- 3. A Section 221(d)(3) below market interest rate (BMIR) project;
- 4. A Section 515 project of the Rural Housing Service;
- 5. Any other type of federally subsidized project specified by HUD.

Combining Subsidy

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

Rent Control [24 CFR 983.305]

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

PART IX: PAYMENTS TO OWNER

17-IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]

During the term of the HAP contract, ~~the PHAOHA~~ must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and ~~the PHAOHA~~ agree on a later date.

Except for discretionary vacancy payments, ~~the PHAOHA~~ may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by ~~the PHAOHA~~ is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

17-IX.B. VACANCY PAYMENTS [24 CFR 983.352]

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if ~~the PHAOHA~~ determines that the vacancy is the owner's fault.

OHA Policy

If OHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, OHA will notify the landlord of the amount of housing assistance payment that the owner must repay.

At the discretion of the OHA, the HAP contract may provide for vacancy payments to the owner. OHA may only make vacancy payments if:

- 1. The owner gives the OHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- 2. The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- 3. The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- 4. The owner provides any additional information required and requested by the OHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the OHA and must provide any information or substantiation required by the OHA to determine the amount of any vacancy payment.

OHA Policy

The owner may retain the HAP payment for the month in which the tenant moved out and OHA may make vacancy loss payments to the owner for up to two (2) full calendar months after the month in which the unit becomes vacant. Vacancy loss payments will be made in an amount equal to OHA's HAP for the family that last occupied that unit. The owner is not eligible to receive any vacancy loss payments beyond the second calendar month after the unit becomes vacant.

The owner will only receive the vacancy loss payment if the vacancy is not the owner's fault (e.g., tenant caused HQS violations) and the owner has taken every action to minimize the likelihood and length of any vacancy.

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified OHA of the vacancy, in accordance with the policy in Section 17 VI.F. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the PHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by OHA within 10 business days of OHA's request, no vacancy payments will be made.

17-IX.C. TENANT RENT TO OWNER

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by OHA. Any changes in the amount of tenant rent will be effective on the date stated in the OHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the OHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHAOHA. The owner must immediately return any excess payment to the tenant.

OHA Policy

OHA may elect to utilize rent determination protocols developed under MTW authority for tenant-based voucher assistance for the determination of tenant rent to owner in project-based voucher program assisted units.

Tenant and OHA Responsibilities

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by OHA.

Likewise, OHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. OHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit.

Utility Reimbursements

If the amount of the utility allowance exceeds the total tenant payment, OHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

OHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If OHA chooses to pay the utility supplier directly, OHA must notify the family of the amount paid to the utility supplier.

OHA Policy

In accordance with MTW Activity #15-02, OHA will not make utility reimbursements to or on behalf of the family.

17-IX.D. OTHER FEES AND CHARGES [24 CFR 983.354]

Meals and Supportive Services

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

Other Charges by Owner

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.