Oakland Housing Authority

Administrative Plan

Updated April 9, 2012

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GLOSSARY. GL-1

Introduction

GUIDE TO REFERENCES CITED IN OHA'S ADMINISTRATIVE PLAN

AUTHORITIES IN THE MODEL ADMINISTRATIVE PLAN

Authority for OHA policies is derived from many sources. Primary among these sources are regulations and guidance issued by HUD. However, because OHA is an MTW agency, the Authority's Board of Commissioners may approve policies that contradict HUD regulations and guidance. California law also directs OHA policy. State law must be followed where such law exists and does not conflict with federal regulations. In the absence of legal requirements or HUD guidance, industry practice may lead to OHA policy.

HUD

HUD provides the primary source of PHA policy through federal regulations, HUD Notices and handbooks. Compliance with federal regulations, current HUD Notices and HUD handbooks is mandatory.

HUD provides non-mandatory guidance to PHAs through HUD published guidebooks. Expired HUD Notices and handbooks also provide guidance for PHA policy. Following HUD guidance is optional, as long as PHA policies comply with federal law, federal regulations and mandatory policy. Because HUD has already determined that the guidance it provides is consistent with mandatory policies, PHA reliance on HUD guidance provides the PHA with a "safe harbor."

Content contained on the HUD website can provide further clarification of HUD policies. For example, FAQs on the HUD website can provide direction on the application of federal regulations to a specific pattern.

MTW

MTW is a demonstration program that offers PHAs the opportunity to design and test innovative, locally-designed housing and self-sufficiency strategies for low-income families by allowing exemptions from existing public housing and tenant-based HCV rules and permitting PHAs to combine operating, capital, and tenant-based assistance funds into a single agency-wide funding source, as approved by HUD.

The purposes of the MTW program are to give PHAs and HUD the flexibility to design and test various approaches for providing and administering housing assistance that accomplish three primary goals:

- Reduce cost and achieve greater cost effectiveness in Federal expenditures;
- 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; and
- Increase housing choices for low-income families.

As an MTW participant, OHA has a contract with HUD that sets the parameters within which OHA may design and test new policies. Within these parameters, OHA's Board will approve specific policies.

State Law

Where there is no mandatory federal guidance, PHAs must comply with state law, if it exists. Where state law is more restrictive than federal law, but does not conflict with it, the PHA should follow the state law.

Industry Practice

Where no law or HUD authority exists on a particular subject, industry practice may support PHA policy. An industry practice is a way of doing things that is followed by most housing authorities.

RESOURCES CITED IN THE MODEL ADMINISTRATIVE PLAN

The model administrative plan cites several documents. Where a document or resource is cited frequently, it may be abbreviated. Where it is cited only once or twice, the model administrative plan may contain the entire name of the document or resource. Following is a key to abbreviations used for various sources that are frequently cited in the administrative plan and a list of references and document locations that are referenced in the model administrative plan or that may be helpful to you.

Abbreviations

Throughout the model administrative plan, abbreviations are used to designate certain documents in citations. The following is a table of abbreviations of documents cited in the model administrative plan. A complete list of abbreviations and acronyms can be found in the Glossary.

Abbreviation	Document
CFR	Code of Federal Regulations
HCV GB	Housing Choice Voucher Program Guidebook (7420.10G), April 2001.
HUD-50058 IB	HUD-50058 Instruction Booklet
RHIIP FAQs	Rental Housing Integrity Improvement Program (RHIIP) Frequently Asked Questions.
VG	PIH Notice 2004-01 Verification Guidance, March 9, 2004.
HB 4350.3	Occupancy Requirements of Subsidized Multifamily Housing Programs

Resources and Where to Find Them

Following is a list of resources that are referenced in the Administrative Plan, or that provide background for the policies contained in the Plan, and the online location of each.

Document and Location
Code of Federal Regulations **http://www.gpoaccess.gov/cfr/index.html**
Earned Income Disregard FAQ **www.hud.gov/offices/pih/phr/about/ao_faq_eid.cfm**
Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Final Rule **http://edocket.access.gpo.gov/2008/pdf/E8-19435.pdf**
Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data **http://www.hud.gov/offices/pih/programs/ph/rhiip/docs/eivsecguidepha.pdf**
Executive Order 11063 **http://www.hud.gov/offices/fheo/FHLaws/EXO11063.cfm**

Federal Register **http://www.access.gpo.gov/su_docs/aces/fr-cont.html**
General Income and Rent Determination FAQs **www.hud.gov/offices/pih/programs/ph/rhiip/faq_gird.cfm**
Housing Choice Voucher Program Guidebook (7420.10G), April 2001 **www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm**
HUD-50058 Instruction Booklet **http://www.hud.gov/offices/pih/systems/pic/50058/pubs/ib/form50058ib.pdf**
Joint Statement of the Department of Housing and Urban Development and the Department of Justice, issued May 17, 2004 **http://www.hud.gov/offices/fheo/library/huddojstatement.pdf**
Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 **http://www.hudclips.org/sub_nonhud/cgi/pdf/31267.pdf**
OMB Circular A-133 **http://www.whitehouse.gov/omb/circulars/a133/a133.html**
PIH Notice 2002-01 (HA), Accessibility Notice **http://www.hud.gov/offices/pih/publications/notices/02/pih2002-1.pdf**
PIH Notice 2004-18 (HA), Verification of Social Security (SS) and Supplemental Security Income (SSI) Benefits **http://www.hud.gov/offices/pih/publications/notices/04/pih2004-18.pdf**
PIH Notice 2005-01 (HA), Implementation of the Consolidated Appropriations Act (HR 4818 – H Rept 108-792), 2005 Funding Provisions for the Housing Choice Voucher Program **http://www.hud.gov/offices/pih/publications/notices/05/pih2005-1.pdf**
PIH Notice 2005-7 (HA), Rental Integrity Monitoring (RIM) Disallowed Costs and

Sanctions Under the Rental Housing Integrity Improvement Project (RHIIP) Initiative **http://www.hud.gov/offices/pih/publications/notices/05/pih2005-7.pdf**
PIH Notice 2005-9 (HA), Public Housing Agency (PHA) Flexibility to Manage the Housing Choice Voucher Program in 2005 **http://www.hud.gov/offices/pih/publications/notices/05/pih2005-9.pdf**
Project-Based Voucher Program; Final Rule **http://www.hudclips.org/sub_nonhud/cgi/pdf/20035.pdf**

Rental Housing Integrity Improvement Program (RHIIP) Frequently Asked Questions. **www.hud.gov/offices/pih/programs/ph/rhiip/faq.cfm**
Verification FAQ **www.hud.gov/offices/pih/programs/ph/rhiip/faq_verif.cfm**
Verification Guidance, March 2004 (attachment to Notice PIH 2004-1) http://www.hud.gov/offices/pih/publications/notices/04/verifguidance.pdf

The HUD Web site is **http://www.hud.gov/index.html**.

Guidebooks, handbooks and other HUD resources may be found at the HUDClips Web site: http://www.hud.gov/offices/adm/hudclips/.

Chapter 1

OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

The Oakland Housing Authority (OHA) receives its funding for the Housing Choice Voucher (HCV) program from the Department of Housing and Urban Development. OHA is not a federal department or agency. A public housing agency (PHA) is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families. OHA enters into an Annual Contributions Contract with HUD to administer the program requirements on behalf of HUD. OHA must ensure compliance with federal laws, regulations and notices and must establish policy and procedures to clarify federal requirements and to ensure consistency in program operation.

This chapter contains information about OHA and its programs with emphasis on the HCV program. It also contains information about the purpose, intent and use of the plan and guide.

There are three parts to this chapter:

> Part I: The Public Housing Agency (OHA). This part includes a description of OHA, its jurisdiction, its programs, and its mission and intent.
>
> Part II: The HCV Program. This part contains information about the Housing Choice Voucher program operation, roles and responsibilities, and partnerships.
>
> Part III: OHA's Administrative Plan. This part discusses the purpose and organization of the plan and its revision requirements.

PART I: THE PHA

1-I.A. OVERVIEW

This part explains the origin of the **Oakland Housing Authority's (OHA)** creation and authorization, the general structure of the organization, and the relationship between the OHA Board and staff.

MTW Demonstration Program

The Moving to Work (MTW) Demonstration program is authorized under the Omnibus Consolidation Rescission and Appropriations Act of 1996 (Public Law 104-134,110 Stat 1321), dated April 26, 1996. This demonstration program offer public housing authorities the opportunity to design and test innovative , locally designed housing and self-sufficiency strategies for low-income families by allowing exemptions from certain public housing rules.

In 2004, the Oakland Housing Authority was granted the distinguished opportunity to participate in the MTW program. A copy of OHA's MTW Annual Plan and Annual Reports can be found on the OHA website at www.oakha.org .

The program rules discussed within this Administrative Plan are primarily those required by HUD. 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.

1-I.B. ORGANIZATION AND STRUCTURE OF THE PHA

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by OHA for the jurisdiction of the City of Oakland, California.

The officials of OHA are known as commissioners or, collectively, as the board of commissioners. Commissioners are appointed in accordance with state housing law and generally serve in the same capacity as the directors of a corporation, establishing policies under which OHA conducts business, ensuring that policies are followed by OHA staff and ensuring that OHA is successful in its mission. The board is responsible for preserving and expanding the agency's resources and assuring the agency's continued viability.

Formal actions of OHA are taken through written resolutions, adopted by the board of commissioners and entered into the official records of OHA.

The principal staff member of OHA is the executive director (ED), hired and appointed by the board of commissioners. The executive director is directly responsible for carrying out the policies established by the commissioners and is delegated the responsibility for hiring, training and supervising the remainder of OHA's staff in order to manage day-to-day operations to ensure compliance with federal and state laws and directives for the programs managed. In addition, the ED's duties include budgeting and financial planning for the agency.

1-I.C. OHA MISSION

The purpose of a mission statement is to communicate the purpose of the agency to people inside and outside of the agency. It provides guiding direction for developing strategy, defining critical success factors, searching out key opportunities, making resource allocation choices, satisfying clients and stakeholders, and making decisions.

<u>OHA Policy</u>

OHA's mission is "To assure the availability of quality housing for low-income persons and to promote the civic involvement and economic self-sufficiency of residents and to further the expansion of affordable housing within Oakland."

1-I.D. OHA'S PROGRAMS

OHA's Administrative Plan is applicable to the operation of the following programs:

- The Housing Choice Voucher program
- The Section 8 Homeownership program
- The Project-Based Voucher Program (Chapter 17)

HCV policies pertain to clients participating in OHA's Family Self Sufficiency program.

1-I.E. OHA'S COMMITMENT TO ETHICS AND SERVICE

As a public service agency, OHA is committed to providing excellent service to HCV program participants – families and owners – in the community. OHA's standards include:

- Administer applicable federal and state laws and regulations to achieve high ratings in compliance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing – in compliance with program housing quality standards – for very low-income families while ensuring that family rents are fair, reasonable, and affordable.
- Encourage self-sufficiency of participant families and assist in the expansion of family opportunities that address educational, socio-economic, recreational and other human services needs.
- Promote fair housing and the opportunity for very low-income families of all ethnic backgrounds to experience freedom of housing choice.
- Promote a housing program that maintains quality service and integrity while providing an incentive to private property owners to rent to very low-income families.
- Promote a market-driven housing program that will help qualified low-income families be successful in obtaining affordable housing and increase the supply of housing choices for such families.
- Create positive public awareness and expand the level of family, owner, and community support in accomplishing OHA's mission.
- Attain and maintain a high level of standards and professionalism in day-to-day management of all program components.
- Administer an efficient, high-performing agency through continuous improvement of OHA's support systems and commitment to our employees and their development.

OHA will make every effort to keep program participants informed of HCV program rules and regulations, and to advise participants of how the program rules affect them.

PART II. THE HOUSING CHOICE VOUCHER (HCV) PROGRAM

1-II.A. OVERVIEW AND HISTORY OF THE PROGRAM

The intent of this section is to provide the public and staff with information related to the overall operation of the program. There have been many changes to the program since its inception in 1974 and a brief history of the program will assist the audience in understanding the program.

The United States Housing Act of 1937 (the "Act") is responsible for the birth of federal housing program initiatives. The Act was intended to provide financial assistance to states and cities for public works projects, slum clearance and the development of affordable housing developments for low-income residents.

The Housing and Community Development (HCD) Act of 1974 created a new federally assisted housing program – the Section 8 Existing program (also known as the Section 8 Certificate program). The HCD Act represented a significant shift in federal housing strategy from locally owned public housing to privately owned rental housing.

Under the Certificate program, federal housing assistance payments were made directly to private owners of rental housing, where this housing was made available to lower-income families. Eligible families were able to select housing in the private rental market. Assuming that the housing met certain basic physical standards of quality ("housing quality standards") and was within certain HUD-established rent limitations ("fair market rents"), the family would be able to receive rental assistance in the housing unit. Family contribution to rent was generally set at 30 percent of the family's adjusted income, with the remainder of the rent paid by the program.

Another unique feature of the Certificate program was that the rental assistance remained with the eligible family, if the family chose to move to another privately owned rental unit that met program requirements (in contrast to the public housing program where the rental assistance remains with the unit, should the family decide to move). Consequently, the Certificate program was characterized as tenant-based assistance, rather than unit-based assistance.

The Housing and Community Development (HCD) Act of 1987 authorized a new version of tenant-based assistance – the Section 8 Voucher program. The Voucher program was very similar to the Certificate program in that eligible families were able to select housing in the private rental market and receive assistance in that housing unit.

However, the Voucher program permitted families more options in housing selection. Rental housing still had to meet the basic housing quality standards, but there was no fair market rent limitation on rent. In addition, family contribution to rent was not set at a limit of 30 percent of adjusted income. Consequently, depending on the actual rental cost of the unit selected, a family might pay more or less than 30 percent of their adjusted income for rent.

From 1987 through 1999, public housing agencies managed both the Certificate and Voucher tenant-based assistance programs, with separate rules and requirements for each. From 1994 through 1998, HUD published a series of new rules, known as "conforming" rules, to more closely combine and align the two similar housing programs, to the extent permitted by the law.

In 1998, the Quality Housing and Work Responsibility Act (QHWRA) – also known as the Public Housing Reform Act – was signed into law. QHWRA eliminated all statutory differences between the Certificate and Voucher tenant-based programs and required that the two programs be merged into a single tenant-based assistance program, now known as the Housing Choice Voucher (HCV) program.

The HCV program was modeled closely on the pre-merger Voucher program. However, unlike the pre-merger Voucher program, the HCV program requires an assisted family to pay at least 30 percent of adjusted income for rent.

The transition of assistance from the Certificate and Voucher programs to the new HCV program began in October 1999. By October 2001, all families receiving tenant-based assistance were converted to the HCV program.

1-II.B. HCV PROGRAM BASICS

The purpose of the HCV program is to provide rental assistance to eligible families. The rules and regulations of the HCV program are determined by the U.S. Department of Housing and Urban Development. OHA is afforded choices in the operation of the program that are included in its Administrative Plan, a document approved by the board of commissioners of OHA. Because OHA is an MTW agency, its range of choices is much broader than non-MTW PHAs.

The HCV program offers mobility to eligible families because they may search for suitable housing anywhere in OHA's jurisdiction and may also be eligible to move under portability to other PHAs' jurisdictions.

When a family is determined to be eligible for the program and funding is available, OHA issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, OHA will enter into a contract with the owner and the family will enter into a lease with the owner. Each party makes their respective payment to the owner so that the owner receives full rent.

Even though the family is determined to be eligible for the program, the owner has the responsibility of approving the family as a suitable renter. OHA continues to make payments to the owner as long as the family is eligible and the housing unit continues to qualify under the program.

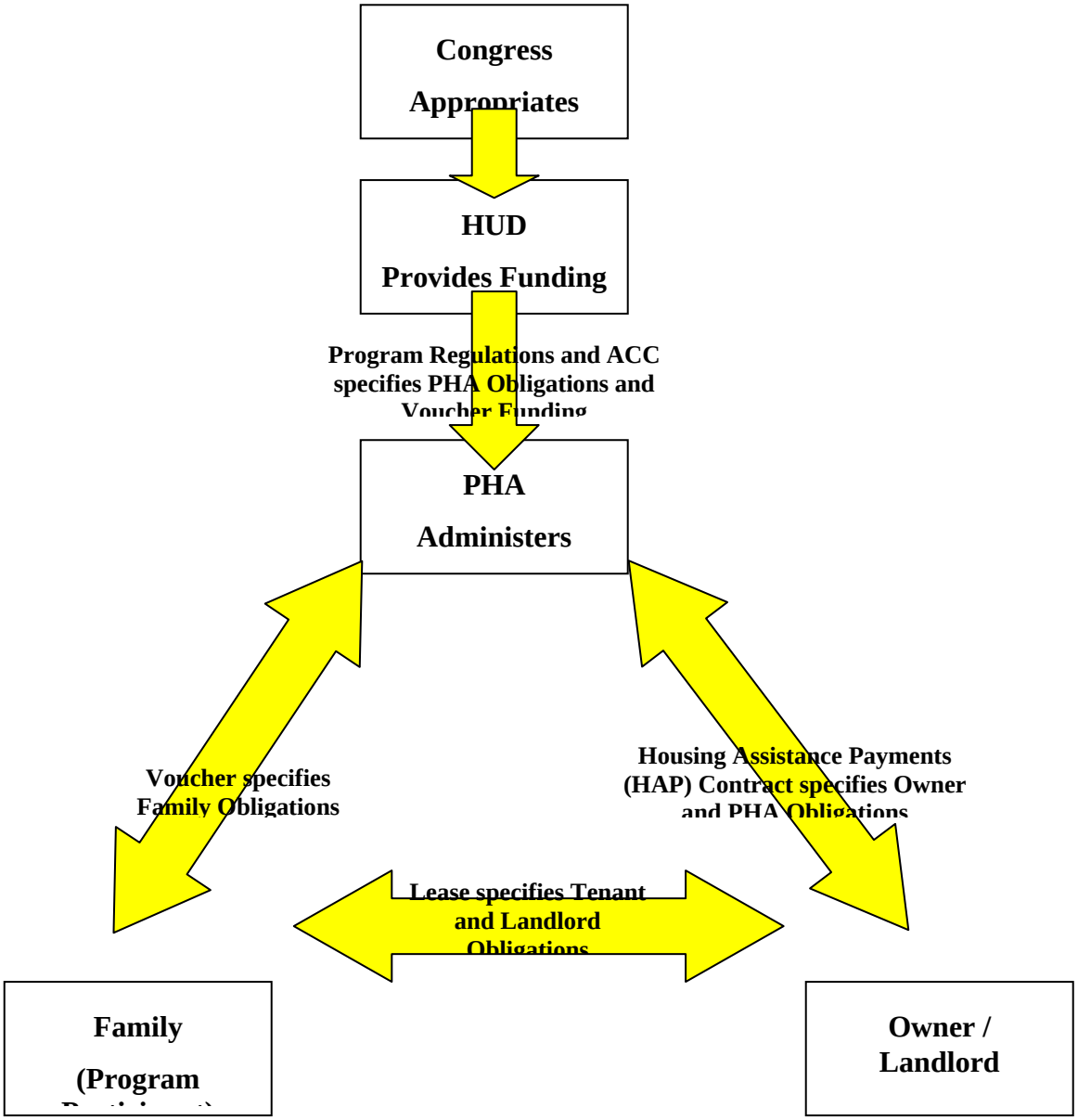
1-II.C. THE HCV PARTNERSHIPS

To administer the HCV program, OHA enters into a contractual relationship with HUD. OHA also enters into contractual relationships with the assisted family and the owner or landlord of the housing unit.

For the HCV program to work and be successful, all parties involved – HUD, OHA, the owner, and the family – have important roles to play. The roles and responsibilities of all parties are defined in federal regulations and in legal documents that parties execute to participate in the program.

The chart on the following page illustrates key aspects of these relationships.

The HCV Relationships:



What does HUD do?

HUD has the following major responsibilities:

- Develop regulations, requirements, handbooks, notices and other guidance to implement HCV housing program legislation passed by Congress;
- Allocate HCV program funds to PHAs;
- Provide technical assistance to PHAs on interpreting and applying HCV program requirements;
- Monitor PHA compliance with HCV program requirements and PHA performance in program administration.

What does the OHA do?

OHA administers the HCV program under contract with HUD and has the following major responsibilities:

- Establish local policies;
- Review applications from interested applicant families to determine whether applicants are eligible for the program;
- Maintain waiting list and select families for admission;
- Issue voucher to selected family and, if necessary, assist the family in finding a place to live;
- Conduct outreach to owners, with special attention to owners outside areas of poverty or minority concentration;
- Approve the rental unit (including assuring compliance with housing quality standards and rent reasonableness), the owner, and the tenancy;
- Make housing assistance payments to the owner in a timely manner;
- Ensure that families and their rental units continue to qualify under the program;
- Ensure that owners and families comply with program rules;
- Provide families and owners with prompt, professional service;
- Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the Annual Contributions Contract, HUD-approved applications for funding, the PHA's administrative plan, and other applicable federal, state and local laws.

What does the Owner do?

The owner has the following major responsibilities:

- Screen families who apply for tenancy, to determine if they will be good renters.
    - OHA can provide some information to the owner, but the primary responsibility for tenant screening rests with the owner.
    - The owner should consider family background factors such as rent and bill-paying history, history of caring for property, respecting the rights of others to peaceful enjoyment of the property, compliance with essential conditions of tenancy, whether the family is engaging in drug-related criminal activity or other criminal activity that might threaten others.
- Comply with the terms of the Housing Assistance Payments contract, executed with OHA;
- Comply with all applicable fair housing laws and discriminate against no one;
- Maintain the housing unit by making necessary repairs in a timely manner;
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

What does the Family do?

The family has the following responsibilities:

- Provide OHA with complete and accurate information, determined by OHA to be necessary for administration of the program;
- Make their best and most timely efforts to find a place to live that is suitable for them and that qualifies for the program;
- Cooperate in attending all appointments scheduled by OHA;
- Allow OHA to inspect the unit at reasonable times and after reasonable notice;
- Take responsibility for care of the housing unit, including any violations of housing quality standards caused by the family;
- Comply with the terms of the lease with the owner;
- Comply with the family obligations of the voucher;
- Not commit serious or repeated violations of the lease;
- Not engage in drug-related or violent criminal activity;
- Notify OHA and the owner before moving or termination the lease;
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit, assign the lease, or have any interest in the unit;
- Promptly notify OHA of any changes in family composition;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

If all parties fulfill their obligations in a professional and timely manner, the program responsibilities will be fulfilled in an effective manner.

1-II.D. APPLICABLE REGULATIONS

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
- 24 CFR Part 983: Section 8 Project-Based (PBV) Voucher Program

PART III. THE HCV ADMINISTRATIVE PLAN

1-III.A. OVERVIEW AND PURPOSE OF THE PLAN

The administrative plan is required by HUD. The purpose of the administrative plan is to establish policies for carrying out the programs in a manner consistent with HUD requirements and local goals and objectives contained in OHA's agency plan. This administrative plan is a supporting document to OHA's agency plan, and is available for public review as required by CFR 24 Part 903.

This administrative plan is set forth to define OHA's local policies for operation of the housing programs in the context of federal laws and regulations. All issues related to Section 8 not addressed in this document are governed by such federal regulations, HUD handbooks and guidebooks, notices and other applicable law. The policies in this administrative plan have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding.

OHA is responsible for complying with all changes in HUD regulations pertaining to the HCV program. If such changes conflict with this plan, HUD regulations will have precedence.

Administration of the HCV program and the functions and responsibilities of OHA staff shall be in compliance with OHA's personnel policy and HUD's Section 8 regulations as well as all federal, state and local fair housing laws and regulations.

MTW Demonstration Program

The program rules discussed within this Administrative Plan are primarily those required by HUD. 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.

1-III.B. CONTENTS OF THE PLAN (24CFR 982.54)

HUD regulations contain a list of what must be included in the administrative plan. The administrative plan must cover OHA policies on these subjects:

- Selection and admission of applicants from OHAs waiting list, including any admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the waiting list (Chapter 4);
- Issuing or denying vouchers, including OHA policy governing the voucher term and any extensions or suspensions of the voucher term. 'Suspension' means stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If OHA decides to allow extensions or suspensions of the voucher term, the administrative plan must describe how OHA determines whether to grant extensions or suspensions, and how OHA determines the length of any extension or suspension (Chapter 5);
- Any special rules for use of available funds when HUD provides funding to OHA for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families (Chapter 4);
- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553 (Chapters 3 and 12);
- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12) ;
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 16);
- Informal hearing procedures for participants (Chapter 16);
- The process for establishing and revising voucher payment standards (Chapter 16);
- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (Chapter 8);
- Special policies concerning special housing types in the program (e.g., use of shared housing) (Chapter 15);

- Policies concerning payment by a family to OHA of amounts the family owes OHA (Chapter 16);
- Interim redeterminations of family income and composition (Chapter 11);
- Restrictions, if any, on the number of moves by a participant family (Chapter 10);
- Approval by the board of commissioners or other authorized officials to charge the administrative fee reserve (Chapter 16);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8); and
- OHA screening of applicants for family behavior or suitability for tenancy (Chapter 3).

New Approach to Policy Development

HUD has developed an approach to monitoring and policy development that requires PHAs to establish policy for those purposes.

A primary focus of HUD's Rental Integrity Monitoring (RIM) program was consistency – consistency in how PHAs conduct their business and in how HUD monitors PHA activities. HUD expects that all staff will be consistent in the procedures they follow and the calculations they make and that their actions will be consistent with the OHA's administrative plan.

HUD makes a distinction between:

- Mandatory policies: those driven by legislation, regulations, current handbooks, notices, and legal opinions, and
- Optional, non-binding guidance, including guidebooks, notices that have expired and recommendations from individual HUD staff.

HUD expects PHAs to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies OHA has adopted. OHA's administrative plan is the foundation of those policies and procedures. HUD's new directions require, more than ever, that PHAs make policy choices to provide guidance to staff and consistency to program applicants and participants.

Following HUD guidance, even though it is not mandatory, provides a PHA with a "safe harbor." HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. If OHA adopts an alternative strategy, it must make its own determination that the alternative approach is consistent with legislation, regulations, and other mandatory requirements. There may be very good reasons for adopting a policy or procedure that is different than HUD's safe harbor, but PHAs should carefully think through those decisions.

> **During the term of the MTW demonstration, OHA will be evaluated by HUD on the basis of its Annual MTW Report, in lieu of the Public Housing Assessment System (PHAS) or its successor system (except for reasonable physical inspections in accordance with this Agreement), and the Section 8 Management Assessment Program (SEMAP) and other program evaluation requirements, except as otherwise provided in OHA MTW Agreement. OHA will submit an Annual MTW Report to HUD in lieu of any other reports during the term of the demonstration.**

1-III.C. UPDATING AND REVISING THE PLAN

OHA will revise this administrative plan as needed to comply with changes in HUD regulations and activities implemented under OHA's MTW authority. The original plan and any changes must be approved by the board of commissioners of the agency.

OHA will review and update the plan at least once a year, and more often if needed, to reflect changes in regulations, OHA operations, or when needed to ensure staff consistency in operation.

Chapter 2

FAIR HOUSING AND EQUAL OPPORTUNITY

INTRODUCTION

This chapter explains the laws and HUD regulations requiring PHAs to affirmatively further civil rights and fair housing in all federally-assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further nondiscrimination pertains to all areas of OHA's housing choice voucher (HCV) operations.

This chapter describes HUD regulations and OHA policies related to these topics in three parts:

Part I: Nondiscrimination. This part presents the body of laws and regulations governing the responsibilities of OHA regarding nondiscrimination.

Part II: Policies Related to Persons with Disabilities. This part discusses the rules and policies of the public housing program related to reasonable accommodation for persons with disabilities. These rules and policies are based on the Fair Housing Act (42.U.S.C.) and Section 504 of the Rehabilitation Act of 1973, and incorporate guidance from the Joint Statement of the Department of Housing and Urban Development and the Department of Justice (DOJ), issued May 17, 2004.

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of OHA to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates HUD's and the DOJ's Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the *Federal Register* ("Notice of Guidance").

PART I: NONDISCRIMINATION

2-I.A. OVERVIEW

Federal laws require PHAs to treat all applicants and participants equally, providing the same quality of service regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. OHA will comply fully with all Federal, State, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- Violence Against Women Reauthorization Act of 2005 (VAWA)
- Any applicable State laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

When more than one civil rights law applies to a situation, the laws will be read and applied together.

2-I.B. NONDISCRIMINATION

The Oakland Housing Authority (OHA) fully complies with all Federal, State and local nondiscrimination laws; the American with Disabilities Act; and the U.S. Department of Housing and Urban Development regulations governing Fair Housing and Equal Opportunity.

OHA does not discriminate because of age, handicap, disability, race, color, creed, gender, national or ethnic origin, familial status, marital status or sexual orientation.

Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

OHA will not use any of these factors to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the housing choice voucher program
- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission
- Steer an applicant or participant toward or away from a particular area based any of these factors
- Deny anyone access to the same level of services
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate in the provision of residential real estate transactions
- Discriminate against someone because they are related to or associated with a member of a protected class
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class.

In accordance with Section 504 of the Rehabilitation Act of 1973, as amended, no otherwise qualified individual with handicaps shall, solely by reason of his/her handicap, be excluded from the participation in, be denied the benefit of, or be subjected to discrimination under any program or activity of OHA. OHA will take appropriate measures to ensure that individuals with disabilities shall have equal access to available services, programs, and activities offered. Such appropriate measures include, but are not limited to:

1. Provision of telecommunication devices for the deaf;
2. Provision of sign language interpreters, as requested;
3. Provision of readers and amanuenses, as requested;
4. Utilization of barrier-free meeting places;
5. Provision of a discrimination complaint procedure.

Providing Information to Families

OHA will take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, OHA must provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR 982.301]. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the contract.

Discrimination Complaints

OHA Policy

If an applicant or participant believes that any family member has been discriminated against by a PHA or an owner, the family should advise OHA. HUD requires OHA to make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action. Accordingly, OHA will assist any family that believes they have suffered illegal discrimination by providing them copies of the appropriate housing discrimination forms. OHA will also assist families in completing the forms, if requested. The address of the nearest Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity will also be provided, as well as the California Department of Fair Employment and Housing**.**

PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES

2-II.A. OVERVIEW

One type of disability discrimination prohibited by the Fair Housing Act is the refusal to make reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a program or dwelling under the program.

OHA must ensure that persons with disabilities have full access to OHA's programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the HCV program.

OHA will ask all applicants and participants if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by OHA, by including the following language:

> "If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact the OHA 504/ADA Coordinator.

A specific name and phone number will be indicated as the contact for requests for accommodation for persons with disabilities.

2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

A person with a disability may require a special accommodation in order to have equal access to the HCV program. The types of reasonable accommodations the PHA can provide include changes, exceptions, or adjustments to a rule, policy, practice, or service.

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for the OHA, or result in a “fundamental alteration” in the nature of the program or service offered. A fundamental alteration is a modification that alters the essential nature of a provider’s operations.

Types of Reasonable Accommodations

When it is reasonable (see definition above and Section 2-II.E), OHA shall modify normal procedures to accommodate the needs of a person with disabilities accommodate the needs of a person with disabilities. Examples include but are not limited to:

- Permitting applications and reexaminations to be completed by mail
- Conducting home visits
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the PHA range) if the PHA determines this is necessary to enable a person with disabilities to obtain a suitable housing unit
- Providing time extensions for locating a unit when necessary because of lack of availability of accessible units or special challenges of the family in seeking a unit
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with OHA staff
- Displaying posters and other housing information in locations throughout OHA's office in such a manner as to be easily readable from a wheelchair

2-II.C. REQUEST FOR AN ACCOMMODATION

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that OHA treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

OHA Policy

OHA will encourage the family to make its request in writing using a reasonable accommodation request form. However, OHA will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted.

The family must explain what type of accommodation is needed to provide the person with the disability full access to OHA's programs and services.

If the need for the accommodation is not readily apparent or known to OHA, the family must explain the relationship between the requested accommodation and the disability. There must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

2-II.D. VERIFICATION OF DISABILITY

The regulatory civil rights definition for persons with disabilities is provided in Exhibit 2-1 at the end of this chapter. The definition of a person with a disability for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of disability which is used for waiting list preferences and income allowances.

Before providing an accommodation, OHA must determine that the person meets the definition of a person with a disability, and that the accommodation will enhance the family's access to OHA's programs and services.

If a person's disability is obvious or otherwise known to OHA, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to OHA, OHA must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

When verifying a disability, OHA will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16 (Program Administration). In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].
- OHA must request only information that is necessary to evaluate the disability-related need for the accommodation. OHA may not inquire about the nature or extent of any disability.
- OHA will request the verifying entity to state whether the accommodation will be needed on a permanent or temporary basis.
- If a reasonable accommodation is approved on a temporary basis, OHA will require an annual recertification to verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability continue to require the requested accommodation. If a reasonable accommodation is approved on a permanent basis, an annual recertification of the disability will not be required. A required annual recertification of the disability will be conducted in conjunction with the regularly scheduled annual reexamination of income and family composition in accordance with the policies set in Chapter 11.
- Medical records will not be accepted or retained in the participant file.

2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

A PHA must approve a request for an accommodation if the following three conditions are met.

- The request was made by or on behalf of a person with a disability.
- There is a disability-related need for the accommodation.
- The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on the PHA, or fundamentally alter the nature of the PHA's operations (including the obligation to comply with HUD requirements and regulations).

Requests for accommodations must be assessed on a case-by-case basis. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the PHA at the time of the request, the benefits that the accommodation would provide to the family, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

Before making a determination whether to approve the request, the PHA may enter into discussion and negotiation with the family, request more information from the family, or may require the family to sign a consent form so that the PHA may verify the need for the requested accommodation.

OHA Policy

After a request for an accommodation is presented, OHA will respond, in writing, within 15 business days.

If OHA denies a request for an accommodation because it is not reasonable (it would impose an undue financial and administrative burden or fundamentally alter the nature of the PHA's operations), the notice will inform the family of the right to appeal OHA's decision through an informal hearing (if applicable, see Chapter 16).

If OHA denies a request for an accommodation because it is not reasonable (it would impose an undue financial and administrative burden or fundamentally alter the nature of OHA's operations), OHA will discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs without a fundamental alteration to the public housing program and without imposing an undue financial and administrative burden.

If OHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, OHA will notify the family, in writing, of its determination within 15 business days from the date of the most recent discussion or communication with the family. The notice will inform the family of the right to appeal OHA's decision through an informal hearing (if applicable, see Chapter 16).

2-II.F. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS

HUD regulations require OHA to take reasonable steps to ensure that persons with disabilities related to hearing and vision have reasonable access to OHA's programs and services [24 CFR 8.6].

At the initial point of contact with each applicant, OHA shall inform all applicants of alternative forms of communication that can be used other than printed language.

OHA Policy

To meet the needs of persons with hearing impairments, TTD (text telephone display) communication will be available.

To meet the needs of persons with vision impairment, large-print versions of key program documents and one-on-one assistance will be provided upon request. When visual aids are used in public meetings or presentations, or in meetings with OHA staff, one-on-one assistance will be provided upon request.

Additional examples of alternative forms of communication are sign language interpretation; having material explained orally by staff; or having a third party representative (a friend, relative or advocate named by the applicant) to receive, interpret and explain housing materials and be present at all meetings.

2-II.G. PHYSICAL ACCESSIBILITY

OHA must comply with a variety of regulations pertaining to physical accessibility, including the following.

- PIH 2002-01 (HA), Accessibility Notice
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

OHA's policies concerning physical accessibility must be readily available to applicants and resident families. They can be found in three key documents.

- This plan describes the key policies that govern OHA's responsibilities with regard to physical accessibility.
- Notice PIH 2006-03(HA) Accessibility Notice (which must be posted in the public housing offices in a conspicuous place) summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
- OHA Plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of OHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the HCV program.

When issuing a voucher to a family that includes an individual with disabilities, the PHA will include a current list of available accessible units known to the PHA and will assist the family in locating an available accessible unit, if necessary.

In general, owners must permit the family to make reasonable modifications to the unit. However, the owner is not required to pay for the modification and may require that the unit be restored to its original state at the family's expense when the family moves.

2-II.H. DENIAL OR TERMINATION OF ASSISTANCE

OHA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 982.552 (2)(iv)]

When applicants with disabilities are denied assistance, the notice of denial must inform them of OHA's informal review process and their right to request a hearing. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal hearing process.

When a participant family's assistance is terminated, the notice of termination must inform them of OHA's informal hearing process and their right to request a hearing and reasonable accommodation.

When reviewing reasonable accommodation requests, OHA must consider whether any mitigating circumstances can be verified to explain and overcome the problem that led to OHA's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, OHA must make the accommodation.

In addition, OHA must provide any reasonable accommodations necessary for persons with disabilities to participate in the hearing process.

PART III: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)

2-III.A. OVERVIEW

On December 19, 2003 HUD published guidance designed to assist housing authorities to comply with Title VI of the Civil Rights Act of 1964 (Title VI) and implementing regulations. Title VI, 42 U.S.C. § 2000d et seq., was enacted as part of the landmark Civil Rights Act of 1964. It prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

While most individuals living in the United States read, write, speak and understand English, there are many for whom English is not their primary language. If these individuals have a limited ability to read, write, speak or understand English, they are considered limited English proficient (LEP). Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information relevant to the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the *Federal Register*.

Recipients of federal financial assistance are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons and have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government programs, services, and activities.

LEP persons are defined as persons who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. For the purposes of this Administrative Plan, LEP persons are all HCV applicants and participants or their authorized representative (which could be their parents or other family members). The exception to this will be during times when any of the Section 8 wait lists are open or for outreach material that explains how to access the program. In these instances, LEP persons will include all potential applicants. In all cases, OHA will determine language services provided LEP populations based on data for the City of Oakland.

In order to determine the level of access needed by LEP persons who speak a particular language, OHA will balance the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the HCV program; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to OHA and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on OHA.

2-III.B. PLAN ON LANGUAGE ASSISTANCE FOR NON- AND LIMITED ENGLISH SPEAKING APPLICANTS AND PARTICIPANTS (LEP PLAN)

OHA adopts this LEP Plan to address the identified needs of the LEP populations served, or potentially served, by its programs. In compliance with federal guidelines, OHA shall make reasonable efforts to provide free language assistance for its LEP clients in all of its voucher programs so as to ensure that these persons have meaningful access to OHA programs and activities.

LEP POPULATIONS FOR WHICH OHA WILL PROVIDE LANGUAGE ASSISTANCE

OHA will make all reasonable efforts to assist clients with limited English proficiency in their primary language. OHA will utilize a tiered array of mechanisms to provide interpretation and translation services for clients. OHA will utilize, outside interpretation and translation services as well as bilingual staff in this implementation. Specific methods that will be utilized are described below. Based on analysis of data from the 2000 Census, Oakland Unified School District data, the Authority's Section 8 wait list and the Authority's past use of Language Line Services, OHA will provide the widest array of translation and interpretation services to Chinese (Cantonese interpretation, standard character translation), Spanish, and Vietnamese clients.

LANGUAGE ASSISTANCE MEASURES

Oral Interpretation

Callers to the Authority's automated phone system will be presented with menu options in Cantonese, Spanish and Vietnamese. Answers to FAQs will be provided via the phone system (the same answers will be provided in English), as will instructions on how to receive further assistance with oral interpretation in the languages assisted by the Authority. The Authority will utilize "I speak" flash cards to identify the language spoken by walk-in LEP clients. Once identified, OHA will utilize the Language Line phone service to assist walk-in clients. The use of Language Line will enable the Authority to provide assistance to walk-in clients in over 150 languages.

Where reasonable, oral interpretation is available for the following compulsory activities if requested by LEP clients prior to their appointment:

(1) Intake and Interview Process
(2) Applicant Review
(3) Voucher Briefing
(4) Participant Counseling Sessions
(5) Participant Hearings
(6) Annual and Interim Re-examinations
(7) Housing Quality Standards Inspections

Where reasonable, oral interpretation is available for the following voluntary activities if requested by LEP clients prior to the activity:

(1) Family Self-sufficiency Briefing
(2) Homeownership Briefing
(3) RAB Meetings
(4) Board of Commissioner's Meetings

Where feasible and available, OHA will hire bilingual staff to assist LEP clients in Cantonese, Spanish and Vietnamese. Where possible, the Authority will assign LEP clients to bilingual staff who speak their language. If a bilingual staff person is not available for an appointment, or to assist clients who speak other than one of these three languages, the Authority will either utilize the Language Line phone service or will contract with an outside entity to conduct interpretation.

Bilingual staff employed by OHA who will be used to provide interpretation must either be certified or pass a required test. OHA's Human Resources Department will determine the testing requirements and agency. Other bilingual staff, bilingual clients and outside organizations will be utilized to occasionally review interpretation for accuracy and appropriateness.

When oral interpretive services are offered, they will be provided in a timely manner.

Written Translation

Written Translation is the replacement of a written text from one language into an equivalent written text in another language.

In order to comply with written translation obligations, OHA will only translate those documents that are necessary to provide essential services. The documents will be revised as business needs change and OHA will accept recommendations from the City of Oakland concerning the need to translate certain documents. Oral interpreters will be utilized to translate any documents not translated into multiple languages.

STAFF TRAINING

Since virtually all Leased Housing staff come into frequent contact with program participants, all Leased Housing staff will be given a copy of the Authority's LEP Plan and will also be trained on its implementation. Training will include:

1. An in-depth discussion of the plan.
2. How to respond to LEP callers
3. How to respond to written communications from LEP clients.
4. How to respond to LEP clients who contact the Authority in-person.
5. How to use the "I speak" cards.
6. How to operate the Language Line Service.

7. Which staff and outside vendors are available for interpretation at appointments.
8. The location of translated documents.

Customer service staff and staff with large caseloads of LEP clients will receive additional training that will address:

1. How to work effectively with in-person and telephone interpreters.

Bilingual staff will receive additional training that will address:

1. How to adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles.
2. The specialized knowledge of the area of service or programs that LEP clients are applying or participating (if necessary).
3. How to be competent and knowledgeable in providing interpretation that preserves confidentiality.

If budget and other work duties permit, bilingual staff may also receive further training in interpretation skills.

NOTICE OF RIGHTS TO LANGUAGE ASSISTANCE

Multilingual signs or posters will be placed in common areas and offices to inform the public that OHA provides free interpretation services. Similar notices will also be placed in outreach materials published for the housing choice voucher program and on OHA's web site. Multilingual assistance will also be provided in OHA's automated voicemail system for the Leased Housing Department. Significant outreach efforts, such as the opening of any of the Authority's Section 8 wait lists will include notices in newspapers in languages other than English and also on non-English language radio and television. All notices and posters will be provided in the languages in which the Authority has committed to provide assistance.

The Authority will also notify and, where possible, work with local schools and community and faith-based organizations that work with LEP groups in any outreach efforts.

"Tag lines" in at least Chinese, Spanish and Vietnamese will be included on correspondence from OHA advising clients that free interpretive services are available and providing information on how to access these services.

MONITORING AND UPDATING THE LEP PLAN

OHA will review its LEP Plan at least annually when it updates its Annual Plan to determine its current effectiveness and any changes in LEP populations or needs. Modifications to the plan will be based on:

1. Census data
2. Frequency of contact analysis of LEP clients and callers by staff.
3. If the current LEP Plan is meeting clients' needs.
4. If the Authority is meeting the LEP goals set forth in this and any other relevant documents.
5. Nature and importance of activities and information to LEP clients.
6. Availability of resources.
7. Whether identified sources for assistance are still available and viable.

EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER FEDERAL CIVIL RIGHTS LAWS [24 CFR Parts 8.3 100.201]

A person with a disability, as defined under federal civil rights laws, is any person who:

- Has a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or
- Has a record of such impairment, or
- Is regarded as having such impairment

The phrase "physical or mental impairment" includes:

- Any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to: such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

"Major life activities" includes, but is not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, and/or working.

"Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major live activities.

"Is regarded as having an impairment" is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as OHA) as constituting such a limitation; has none of the impairments defined in this section but is treated by a public entity as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The definition of a person with disabilities does not include:

- Current illegal drug users
- People whose alcohol use interferes with the rights of others
- Persons who objectively pose a direct threat or substantial risk of harm to others that cannot be controlled with a reasonable accommodation under the public housing program

The above definition of disability determines whether an applicant or participant is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet this definition of disability is not entitled to a reasonable accommodation under federal civil rights and fair housing laws and regulations.

The HUD definition of a person with a disability is much narrower than the civil rights definition of disability. The HUD definition of a person with a disability is used for purposes of receiving the disabled family preference, the $400 elderly/disabled household deduction, the allowance for medical expenses, or the allowance for disability assistance expenses.

The definition of a person with a disability for purposes of granting a reasonable accommodation request is much broader than the HUD definition of disability. Many people will not qualify as a disabled person under the public housing program, yet an accommodation is needed to provide equal opportunity.

EXHIBIT 2-2: AFFIRMATIVELY FUTHERING FAIR HOUSING IN THE HOUSING CHOICE VOUCHER-FAMILY SELF-SUFFICIENCY (HCV FSS) PROGRAM

Under MTW authority, OHA may operate any of its existing self-sufficiency and training program, including its HCV FSS or any successor programs exempt from certain HUD program requirements. These may include those requirements governing program size or participation, including whether to establish escrow account or other rent incentives and whether to establish mandatory self-sufficiency participation requirements. If OHA received dedicated funding for an FSS coordinator, such funds must be used to employ a self sufficiency coordinator. In developing and operating such programs, OHA is authorized to establish strategic relationships and partnership with local private and public agencies and service providers to leverage expertise and funding. However, notwithstanding the above, any funds granted pursuant to a competition must be used in accordance with the NOFA and the approved applications and work plan. This authorization waives certain provisions of Section 23 of the 1937 Act and 24 CFR 984 as necessary to implement the Agency's Annual MTW Plan.

OHA will operate a Family Self-Sufficiency program for HCV participants. OHA carries out the following activities to affirmatively further fair housing in our HCV FSS program:

- Offers search assistance and counseling to HCV participant families,
- Publishes informational news letters and offers fair housing briefings and educational workshops for HCV participant families and landlords,
- Utilizes resources from committed partnerships with local multi-cultural community-based organizations that provide culturally sensitive housing and homeownership assistance programs,
- Conducts targeted FSS marketing to reach qualified participant families,
- Offers oral interpretation for a variety of voluntary services including FSS,
- Offers key FSS documents translated from English into Cantonese, Spanish and Vietnamese,
- Develops affordable homes for purchase throughout the city of Oakland,
- Offers Language Line phone service for translation in over 150 languages,
- Offer TTD (text telephone display) communications,
- Offers a Section 8 HCV Homeownership program with a full time homeownership coordinator on staff that works closely with our FSS Coordinators.

EXHIBIT 2-3: AFFIRMATIVELY FUTHERING FAIR HOUSING IN THE SECTION 8 FAMILY UNIFICATION PROGRAM (FUP) PROGRAM

OHA will operate a Section 8 Family Unification Program (FUP) in partnership with the Alameda County Social Services Agency's Department of Children and Family Services (CFS). In administering the Family Unification Program, OHA will carry out the following activities to affirmatively further fair housing for FUP program participants:

- Identify and ensure certification of FUP eligible families and youth that may be on OHA's waiting list and ensure that the family or youth maintain their original position on the waiting list after certification,
- Appropriately place all FUP eligible families and youth referred from CFS on the HCV waiting list in order of first come, first served,
- Informing applicants on how to file a fair housing complaint including the provision of the toll free number for Housing Discrimination Hotline: 1–800–669–9777 and the Federal Information Relay Service at (800)-887-8339,
- Waive the residency requirement for admission and portability when selecting eligible families and youth for FUP,
- Offer search assistance and housing counseling to FUP participant families.

Additionally OHA also:

- Publishes informational news letters and offer fair housing briefings and educational workshops for all HCV participant families and landlords,
- Utilizes resources from committed partnerships with local multi-cultural community-based organizations that provide culturally sensitive housing and homeownership assistance programs,
- Offers oral interpretation for a variety of voluntary services including FSS,
- Develops affordable homes for purchase throughout the city of Oakland,
- Offers Language Line phone service for translation in over 150 languages,
- Offers TTD (text telephone display) communications,
- Offers a Section 8 HCV Homeownership program with a full time homeownership coordinator on staff.

EXHIBIT 2-4: AFFIRMATIVELY FURTHERING FAIR HOUSING IN THE ADMINISTRATION OF SECTION 8 HOUSING CHOICE VOUCHERS FOR NON-ELDERLY DISABLE HOUSEHOLDS

In administering Section 8 Housing Choice Vouchers for Non Elderly Disabled Households, OHA will carry out the following activities to affirmatively further fair housing:

- Examine its programs or proposed programs;
- Identify any impediments to fair housing choice within those programs;
- Address those impediments in a reasonable fashion in view of the resources available;
- Work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require OHA's involvement;
- Maintain records reflecting these analyses and actions; and
- Informing applicant on how to file a fair housing complaint including the provision of the toll free number for Housing Discrimination Hotline: 1–800–669–9777 and the Federal Information Relay Service at (800)-887-8339.

Additionally OHA also:

- Offers search assistance and housing counseling to HCV applicant and participant families;
- Publishes informational news letters and offer fair housing briefings and educational workshops for HCV participant families and landlords;
- Has established partnerships with local multi-cultural community-based organizations that provide culturally sensitive housing services and when requested, assist program applicants and participants to gain access to supportive services available within the community, but not require eligible applicants or participants to accept supportive services as a condition of continued participation in the program;
- Offers Language Line phone service for translation in over 150 languages;
- Offers TTD (text telephone display) communications.

To assist on accessibility issues for persons with disabilities, OHA:

- Has identified public and private funding sources to assist participants with disabilities in covering the costs of structural alterations and other accessibility features that are needed as accommodations for their disabilities;
- Will in accordance with rent reasonableness requirements, approve a higher rent to owners that provide accessible units with structural modifications for persons with disabilities; and
- Will provide technical assistance, through referrals to local fair housing and equal opportunity offices, to owners interested in making reasonable accommodations or units accessible to persons with disabilities.

Chapter 3

ELIGIBILITY

INTRODUCTION

OHA is responsible for ensuring that every individual and family admitted to the HCV program meets all program eligibility requirements. This includes any individual approved to join the family after the family has been admitted to the program. The family must provide any information needed by OHA to confirm eligibility and determine the level of the family's assistance.

To be eligible for the HCV program:

- The applicant family must:
  - Qualify as a family as defined by HUD and OHA.
  - Have income at or below HUD-specified income limits.
  - Qualify on the basis of citizenship or the eligible immigrant status of family members.
  - Provide social security number information for family members as required.
  - Consent to the OHA's collection and use of family information as provided for in OHA-provided consent forms.
- OHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or OHA.

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and OHA definitions of family and household members and explains initial and ongoing eligibility issues related to these members.

Part II: Basic Eligibility Criteria. This part discusses income eligibility, and rules regarding citizenship, social security numbers, and family consent.

Part III: Denial of Admission. This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause the OHA to deny admission.

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.

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PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

3-I.A. OVERVIEW

Some eligibility criteria and program rules vary depending upon the composition of the family requesting assistance. In addition, some requirements apply to the family as a whole and others apply to individual persons who will live in the assisted unit. This part provides information that is needed to correctly identify family and household members, and to apply HUD's eligibility rules.

3-I.B. FAMILY AND HOUSEHOLD [24 CFR 982.201(c), HUD-50058 IB, p. 13]

The terms *family* and *household* have different meanings in the HCV program.

Family

To be eligible for assistance, an applicant must qualify as a family. A family may be a single person or a group of persons.

Family as defined by HUD includes a family with a child or children, two or more elderly or disabled persons living together, one or more elderly or disabled persons living with one or more live-in aides, or a single person. A single person family may be an elderly person, a displaced person, a disabled person, or any other single person. A child who is temporarily away from the home because of placement in foster care is considered a member of the family. OHA has the discretion to determine if any other group of persons qualifies as a family.

A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law but who either can demonstrate that they have lived together previously or certify that each individual's income and other resources will be available to meet the needs of the family.

Each family must identify the individuals to be included in the family at the time of application, and must update this information if the family's composition changes.

Household

Household is a broader term that includes additional people who, with the OHA's permission, live in a assisted unit, such as live-in aides, foster children, and foster adults.

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3-I.C. FAMILY BREAK-UP AND REMAINING MEMBER OF TENANT FAMILY

Family Break-up [24 CFR 982.315]

The PHA has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up. However, if a court determines the disposition of property between members of the assisted family in a divorce or separation decree, the PHA is bound by the court's determination of which family members continue to receive assistance.

OHA Policy

When a family on the waiting list breaks up into two otherwise eligible families, only one of the new families may retain the original application date. Other former family members may make a new application with a new application date if the waiting list is open.

If a family breaks up into two otherwise eligible families while receiving assistance, only one of the new families will continue to be assisted. If the family members are forced to leave the unit because of actual or threatened domestic violence, dating violence, or stalking by a spouse or other members of the household, the OHA may terminate the HAP contract for the original assisted unit and transfer the assistance to the family members forced to leave.

In the absence of a judicial decision or an agreement among the original family members, OHA will determine which family retains their placement on the waiting list, or will continue in occupancy taking into consideration the following factors:

(1) the interest of any minor children, including custody arrangements,

(2) the interest of any ill, elderly, or disabled family members,

(3) any possible risks to family members as a result of criminal activity or actual or threatened domestic violence, dating violence, or stalking where that violence is a contributing cause of the household breakup, and

(4) the recommendations of social service professionals.

Remaining Member of a Tenant Family [24 CFR 5.403]

The HUD definition of family includes the *remaining member of a tenant family,* which is a member of a resident family who remains in the unit when other members of the family have left the unit. Household members such as live-in aides, foster children, and foster adults do not qualify as remaining members of a family.

If dependents are the only “remaining members of a tenant family” and there is no family member able to assume the responsibilities of the head of household, see **Chapter 6, Section 6-I.B, for the policy on “Caretakers for a Child.”**

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3-I.D. HEAD OF HOUSEHOLD [24 CFR 5.504(b)]

Head of household means the adult member of the family who is considered the head for purposes of determining income eligibility and rent. The head of household is responsible for ensuring that the family fulfills all of its responsibilities under the program, alone or in conjunction with a cohead or spouse.

The family may designate any qualified family member as the head of household. A qualified family member means a person that meets all program eligibility requirements.

The head of household must have the legal capacity to enter into a lease under state and local law. A minor who is emancipated under state law may be designated as head of household.

3-I.E. SPOUSE, COHEAD AND OTHER ADULT

A family may have a spouse or cohead, but not both [HUD-50058 IB, p. 13].

Spouse means the marriage partner of the head of household.

> OHA Policy
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> A *marriage partner* includes the partner in a "common law" marriage as defined in state law. The term “spouse” does not apply to friends, roommates, or significant others who are not marriage partners. A marriage partner may be designated as a cohead.

A *cohead* is an individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, but who is not a spouse. A family can have only one cohead.

> OHA Policy
>
> A minor who is emancipated under state law may be designated as a spouse or cohead.

Other adult means a family member, other than the head, spouse, or cohead, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults.

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3-I.F. DEPENDENT [24 CFR 5.603]

A *dependent* is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, cohead, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a deduction from annual income as described in Chapter 6.

Joint Custody of Dependents

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 50 percent or more of the time.

When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. The dependants can only be claimed by one family member.

If there is a dispute about which family should claim them, the 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.

3-I.G. FULL-TIME STUDENT [24 CFR 5.603, HVC GB p. 5-29]

A *full-time student* (FTS) is a person who is attending school or vocational training on a full-time basis. The time commitment or subject load that is needed to be full-time is defined by the educational institution.

Identifying each FTS is important because (1) each family member that is an FTS, other than the head, spouse, or cohead, qualifies the family for a dependent deduction and (2) the income of such an FTS is treated differently from the income of other family members.

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3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY [24 CFR 5.100 and 5.403]

Elderly Persons

An *elderly person* is a person who is at least 62 years of age.

Near-Elderly Persons

A *near-elderly person* is a person who is at least 50 years of age but below the age of 62.

Elderly Family

An *elderly family* is one in which the head, spouse, cohead, or sole member is an elderly person. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6.

3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403]

Persons with Disabilities

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or cohead is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

As discussed in Chapter 2, OHA must make all aspects of the HCV program accessible to persons with disabilities and consider reasonable accommodations requested based upon a person's disability.

Disabled Family

A *disabled family* is one in which the head, spouse, or cohead is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6.

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent OHA from denying admission for reasons related to alcohol and drug abuse following policies found in Part III of this chapter, or from terminating assistance following the policies in Chapter 12.

3-I.J. GUESTS [24 CFR 5.100]

A *guest* is defined as a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

The lease must provide that the tenant has the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests [24 CFR 966.4(d)]. The head of household is responsible for the conduct of visitors and guests, inside the unit as well as anywhere on or near the premises [24 CFR 966.4(f)].

A participant family must notify OHA when overnight guests will be staying in the unit for more than 3 days. A guest can remain in the unit no longer than 14 consecutive days or a total of 30 cumulative calendar days during any 12-month period.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure expected to last 20 consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted unit more than 50 percent of the time, are not subject to the time limitations of guests as described above, nor are they eligible for additional subsidy.

Former household members who have been evicted are not permitted as overnight guests.

Non-household members who represent the unit's address as their residence address for receipt of benefits or other purposes will be considered unauthorized occupants.

Participants can not violate their terms of their lease if the lease is more restrictive than the Authority's guest policies.

3-I.K. FOSTER CHILDREN AND FOSTER ADULTS

Foster adults are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone [24 CFR 5.609].

The term *foster child* is not specifically defined by the regulations.

Foster children and foster adults that are living with an applicant or resident family are considered household members but not family members. The income of foster children/adults is not counted in family annual income and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603 and HUD-50058 IB, pp. 13].

A foster child is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.

A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of HQS space standards according to 24 CFR 982.401.

Children that are temporarily absent from the home as a result of placement in foster care are discussed in Section 3-I.L.

3-I.L. ABSENT FAMILY MEMBERS

Individuals may be absent from the family, either temporarily or permanently, for a variety of reasons including educational activities, placement in foster care, employment, illness, incarceration, court order and actual or threatened domestic violence, dating violence or stalking.

Definitions of Temporarily and Permanently Absent

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.

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 [24 CFR 5.403]

Children temporarily absent from the home as a result of placement in foster care are considered members of the family.

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.

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 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 will waive the 180 day limit subject to verification of the absence due to active duty service.

If a family member is activated by the Federal Government's activation of Reserve or National Guard personnel and as a result the family finds it necessary for another adult to temporarily move into a unit solely to serve as a temporary guardian for children residing in a unit, the presence of the temporary guardian must be approved by the landlord and the income received by the temporary guardian will not be counted in determining family income. If the temporary guardian is determined to be ineligible due to a criminal background, the family will be given 30 days to find a replacement temporary guardian.

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Absent Head, Spouse, or Cohead

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.

Family Members Permanently Confined for Medical Reasons [HCV GB, p. 5-22]

An individual confined to a nursing home or hospital on a permanent basis is not considered a family member and the income of that person is not counted [HCV GB, p. 5-22].

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.

Return of Permanently Absent Family Members

The family must request OHA approval for the return of any adult family members that OHA has determined to be permanently absent. The individual is subject to the eligibility and screening requirements discussed elsewhere in this chapter.

Absence Due to Actual or Threatened Domestic Violence, Dating Violence or Stalking

Prior to determining that a family member or a family has abandoned the unit, the OHA shall take into account the role domestic violence, dating violence, or stalking played in the absence.

3-I.M. LIVE-IN AIDE

Live-in aide means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons, (2) is not obligated for the support of the persons, and (3) would not be living in the unit except to provide the necessary supportive services [24 CFR 5.403].

OHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR 8, to make the program accessible to and usable by a family member with disabilities.

A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations [24 CFR 5.609(b)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. However, a relative who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family.

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional of the family's choosing, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member.

In addition, the family and live-in aide will be required to submit a certification stating that the live-in aide is (1) not obligated for the support of the person(s) needing the care, and (2) would not be living in the unit except to provide the necessary supportive services.

OHA will not approve a particular person as a live-in aide, and may withdraw such approval if [24 CFR 982.316(b)]:

> The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
>
> The person has a history of drug-related criminal activity or violent criminal activity; or
>
> The person currently owes rent or other amounts to OHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

Within **15** business days of receiving a request for a live-in aide, including all required documentation related to the request, OHA will notify the family of its decision in writing.

If a reasonable accommodation is approved on a temporary basis, OHA will require an annual recertification to verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability continue to require the requested accommodation. If a reasonable accommodation is approved on a permanent basis, an annual recertification of the disability will not be required. A required annual recertification of the disability will be conducted in conjunction with the regularly scheduled annual reexamination of income and family composition in accordance with the policies set in Chapter 11.

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PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

HUD is required by law to set income limits that determine the eligibility of applicants for HUD's assisted housing programs, including the HCV program. The income limits are published annually and are based on HUD estimates of median family income in a particular area or county, with adjustments for family size.

Types of Low-Income Families [24 CFR 5.603(b)]

Low-income family. A family whose annual income does not exceed 80 percent of the median income for the area, adjusted for family size.

Very low-income family. A family whose annual income does not exceed 50 percent of the median income for the area, adjusted for family size.

Extremely low-income family. A family whose annual income does not exceed 30 percent of the median income for the area, adjusted for family size.

HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Using Income Limits for Eligibility [24 CFR 982.201]

Income limits are used for eligibility only at admission. Eligibility is established by comparing a family's annual income with HUD's published income limits. To be income-eligible, a family must be one of the following:

- A *very low-income* family
- A *low-income* family that has been "continuously assisted" under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR 982.4]

  OHA will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time they were issued a voucher.
- A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173
- A low-income or moderate-income family that is displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing as defined in 24 CFR 248.101

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HUD permits PHAs to establish additional categories of low-income families that may be determined eligible. The additional categories must be consistent with the PHA plan and the consolidated plans for local governments within the PHA's jurisdiction. OHA has not established any additional categories of eligible low-income families.

Using Income Limits for Targeting [24 CFR 982.201]

At least 75 percent of the families admitted to the PHA's program during a PHA fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if the PHA demonstrates that it has made all required efforts, but has been unable to attract an adequate number of qualified extremely low-income families.

Families continuously assisted under the 1937 Housing Act and families living in eligible low-income housing that are displaced as a result of prepayment of a mortgage or voluntary termination of a mortgage insurance contract are not subject to the 75 percent restriction.

OHA Policy

Under MTW Authority, OHA is authorized to determine qualifications for participation in the rental assistance program that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations, as long as the requirements that: i) at least 75 percent of those assisted under the demonstrations 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 demonstrations 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. of the MTW Agreements 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*

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3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5, Subpart E]

Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or noncitizens that have eligible immigration status. At least one family member must be a citizen, national, or noncitizen with eligible immigration status in order for the family to qualify for any level of assistance.

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, and in accordance with the OHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

Declaration [24 CFR 5.508]

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. Those who elect not to contend their status are considered to be ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, cohead, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

U.S. Citizens and Nationals

In general, citizens and nationals are required to submit a signed 214 declaration form that claims their status. However, HUD regulations permit OHA to request additional documentation of their status, such as a passport.

Family members who declare 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 Noncitizens

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with OHA's efforts to verify their immigration status as described in Chapter 7. The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

Lawful residents of the Freely Associated States or FAS are eligible for housing assistance under section 141 of the Compacts of Free Association between the U.S. Government and the Governments of the FAS [Public Law 106-504]. The FAS are comprised of the Marshall Islands, the Federated States of Micronesia, and Palau.

Ineligible Noncitizens

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. OHA is not required to verify a family member's ineligible status and is not required to report an individual's unlawful presence in the U.S. to the United States Citizenship and Immigration Services (USCIS).

Providing housing assistance to noncitizen students is prohibited [24 CFR 5.522]. This prohibition extends to the noncitizen spouse of a noncitizen student as well as to minor children who accompany or follow to join the noncitizen student. Such prohibition does not extend to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student. Such a family is eligible for prorated assistance as a mixed family.

Mixed Families

A family is eligible for admission as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be prorated, and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 14 for a discussion of informal hearing procedures.

Ineligible Families [24 CFR 5.514(d), (e), and (f)]

OHA will not provide assistance to a family before the verification of at least one family member as a citizen, national, or eligible non-citizen.

When OHA determines that an applicant family does not include any citizens, nationals, or eligible noncitizens, following the verification process, the family will be sent a written notice within 10 business days of the determination.

The notice will explain the reasons for the denial of assistance, that the family may be eligible for proration of assistance, and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with the OHA. The informal hearing with OHA may be requested in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process. The notice must also inform the applicant family that assistance may not be delayed until the conclusion of the USCIS appeal process, but that it may be delayed pending the completion of the informal hearing process.

Informal hearing procedures are contained in Chapter 16.

Timeframe for Determination of Citizenship Status [24 CFR 5.508(g)]

For new occupants joining the resident family, OHA must verify status at the first interim or regular reexamination following the person's occupancy, whichever comes first.

If an individual qualifies for a time extension for the submission of required documents, OHA must grant such an extension for no more than 30 days [24 CFR 5.508(h)].

Each family member is required to submit evidence of eligible status only one time during continuous occupancy.

OHA will verify the status of applicants at the time other eligibility factors are determined.

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218 as amended by MTW]

All family members must provide documentation of: (1) a valid Social Security Number (SSN) or (2) a certification stating that no SSN has been issued. If a family member who is required to execute a certification is less than 18 years old, the certification must be executed by the individual's parent or guardian [24 CFR 5.216(j)]. Assistance cannot be provided to a family until all SSN documentation requirements are met. A detailed discussion of acceptable documentation is provided in Chapter 7.

If a new member who is under the age of 18 is added to the family, the new member's SSN documentation must be submitted at the family's next interim or regular reexamination, whichever comes first. If the new member is over the age of 18, that person must provide SSN documentation as a part of the eligibility determination and prior to being added to the household.

OHA must deny admission to an applicant family if they do not meet the SSN disclosure, documentation and verification, or certification requirements contained in 24 CFR 5.216.

3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.230, HCV GB, p. 5-13]

HUD requires each adult family member, and the head of household, spouse, or cohead, regardless of age, to sign 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. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

OHA must deny admission to the program if any member of the applicant family fails to sign and submit consent forms which allow OHA to obtain information in accordance with 24 CFR 5, Subparts B and F [24 CFR 982.552(b)(3)].

3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR 5.612 and FR Notice 4/10/06]

Section 327 of Public Law 109-115 and the implementing regulation at 24 CFR 5.612 established new restrictions on the eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

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 student's eligibility must be examined along with the income eligibility of the student's parents. In these cases, both the student and the student's parents must be income eligible for the student to receive HCV assistance. If, however, a student in these circumstances is determined independent from his/her parents in accordance with PHA policy, the income of the student's parents will not be considered in determining the student's eligibility.

The new law does not apply to students who reside with parents who are applying to receive HCV assistance. It is limited to students who are seeking assistance on their own, separately from their parents.

Definitions

In determining whether and how the new eligibility restrictions apply to a student, the PHA will rely on the following definitions [FR 4/10/06, p. 18148].

Dependent Child

In the context of the student eligibility restrictions, *dependent child* means a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* in 24 CFR 5.603, which states that the dependent must be a member of the assisted family, other than the head of household or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student. Foster children and foster adults are not considered dependents.

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Independent Student

OHA Policy

OHA will consider a student "independent" from his or her parents and the parents' income will not be considered when determining the student's eligibility if the following four criteria are all met:

The individual is of legal contract age under state law.

The individual has established a household separate from his/her parents for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education's definition of independent student.

To be considered an *independent student* according to the Department of Education, a student must meet one or more of the following criteria:

Be at least 24 years old by December 31 of the award year for which aid is sought

Be an orphan or a ward of the court through the age of 18

Be a veteran of the U.S. Armed Forces

Have one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)

Be a graduate or professional student

Be married

The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.

The individual provides a certification of the amount of financial assistance that will be provided by his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

OHA will verify that a student meets the above criteria in accordance with the policies in Section 7-II.E.

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Institution of Higher Education

The PHA will use the statutory definition under section 102 of the Higher Education Act of 1965 to determine whether a student is attending an *institution of higher education* (see Exhibit 3-2).

Parents

OHA Policy

For purposes of student eligibility restrictions, the definition of *parents* includes biological or adoptive parents, stepparents (as long as they are currently married to the biological or adoptive parent), and guardians (e.g., grandparents, aunt/uncle, godparents, etc).

Veteran

OHA Policy

A *veteran* is a person who served in the active military, naval, or air service and who was discharged or released from such service under conditions other than dishonorable.

Determining Student Eligibility

If a student is applying for assistance on his/her own, apart from his/her parents, the PHA must determine whether the student is subject to the eligibility restrictions contained in 24 CFR 5.612. If the student is subject to those restrictions, the PHA must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from his/her parents or the student's parents are income eligible for the program, and (3) the "family" with which the student is applying is collectively eligible for the program.

OHA Policy

For any student who is subject to the 5.612 restrictions, OHA will:

Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program

Determine whether the student is independent from his/her parents in accordance with the definition of *independent student* in this section

Follow the policies below, if applicable, in determining whether the student's parents are income eligible for the program

If OHA determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, OHA will send a notice of denial in accordance with the policies in Section 3-III.F, and the applicant family will have the right to request an informal review in accordance with the policies in Section 16-III.B.

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Determining Parental Income Eligibility

OHA Policy

For any student who is subject to the 5.612 restrictions and who does not satisfy the definition of *independent student* in this section, OHA will determine the income eligibility of the student's parents as follows:

If the student's parents are married and living together, OHA will obtain a joint income declaration and certification of joint income from the parents.

If the student's parent is widowed or single, OHA will obtain an income declaration and certification of income from that parent.

If the student's parents are divorced or separated, OHA will obtain an income declaration and certification of income from each parent.

If the student has been living with one of his/her parents and has not had contact with or does not know where to contact his/her other parent, OHA will require the student to submit a certification under penalty of perjury describing the circumstances and stating that the student does not receive financial assistance from the other parent. OHA will then obtain an income declaration and certification of income from the parent with whom the student has been living or had contact.

In determining the income eligibility of the student's parents, OHA will use the income limits for the jurisdiction in which the parents live.

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PART III: DENIAL OF ADMISSION

3-III.A. OVERVIEW

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied admission.

In addition, HUD requires or permits OHA to deny admission based on certain types of current or past behaviors of family members as discussed in this part.

Forms of Denial [24 CFR 982.552(a)(2); HCV GB, p. 5-35]

Denial of assistance includes any of the following:

- Not placing the family's name on the waiting list,
- Denying or withdrawing a voucher,
- Not approving a request for tenancy or refusing to enter into a HAP contract, or
- Refusing to process a request for or to provide assistance under portability procedures.
-

Prohibited Reasons for Denial of Assistance [24 CFR 982.202(b)]

HUD rules prohibit denial of assistance to the program based on any of the following criteria:

- Age, disability, race, color, religion, sex, or national origin. (See Chapter 2 for additional information about fair housing and equal opportunity requirements.)
- Where a family lives prior to admission to the program
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the PHA's jurisdiction (See Chapter 10, Portability.)
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock
- Whether the family includes children
- Whether a family decides to participate in a family self-sufficiency program
- Whether or not a qualified applicant has been a victim of actual or threatened domestic violence, dating violence, or stalking.

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3-III.B. MANDATORY DENIAL OF ASSISTANCE [24 CFR 982.553(a)]

PHAs are required to establish standards that prohibit admission of an applicant to the HCV program if they have engaged in certain criminal activity or if OHA has reasonable cause to believe that a household member's current use or pattern of use of illegal drugs, and/ or current abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or neighbors.

Where the statute requires that PHAs prohibit admission for a prescribed period after some disqualifying behavior or event, PHAs may choose to continue that prohibition for a longer period [24 CFR 960.203(c)(3)(ii)].

HUD requires OHA to deny assistance in the following cases:

- Any member of the household has been evicted from federally-assisted housing in the last 5 years for drug-related criminal activity.
- OHA will not admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 5 years for drug-related criminal activity.
- OHA determines that any household member is currently engaged in the use of illegal drugs. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]. *Currently engaged in the illegal use of a drug* means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)].OHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

  In determining reasonable cause, OHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use, sales, possession or abuse of illegal drugs or the abuse of alcohol.
- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing.
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.

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3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION

HUD permits, but does not require OHA to deny admission for the reasons discussed in this section.

Criminal Activity [24 CFR 982.553]

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five years, the family may be denied assistance:

> *Drug-related criminal activity*, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100];
>
> *Violent criminal activity*, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100];
>
> Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or
>
> Criminal activity that may threaten the health or safety of property owners and management staff, and persons performing contract administration functions or other responsibilities on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor, or agent).

Immediate vicinity means within a three-block radius of the premises.

Evidence of such criminal activity includes, but is not limited to:

> Conviction for drug-related or violent criminal activity within the past 5 years;
>
> Any arrests for drug-related or violent criminal activity within the past 5 years;
>
> Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 5 years; or
>
> A conviction for drug-related or violent criminal activity will be given more weight than an arrest for such activity.
>
> In making its decision to deny assistance, OHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, OHA may, on a case-by-case basis, decide not to deny assistance.

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Previous Behavior in Assisted Housing [24 CFR 982.552(c)]

HUD authorizes PHAs to deny admission based on relevant information pertaining to the family's previous behavior and suitability for tenancy.

OHA **will not** deny assistance to an otherwise eligible family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program or the Welfare to Work voucher program.

OHA **will** deny admission to an applicant family if OHA determines that the family:

- Has a record of unsuitable past performance in meeting financial obligations, including rent within the past five years
- Has a record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences within the past five years which may adversely affect the health, safety, or welfare of other tenants
- Has a record of eviction from housing or termination from residential programs within the past five years (considering relevant circumstances)
- Owes rent or other amounts to this or any other PHA or owner in connection with any assisted housing program

  OHA Policy

  If determined during the verification process that any member of the applicant's family owes any PHA money, the applicant will be given 60 days to repay the debt in full unless the PHA to which the debt is owed, authorizes a longer repayment period. At its discretion, OHA may continue verification of an applicant's eligibility, but will not allow the applicant to attend a briefing until the debt has been repaid in full. If the applicant fails to repay the debt in full before the 60-day limit (or such time as authorized by the PHA to which the debt is owed) expires, the applicant's assistance will be denied.
- Misrepresented or does not provide complete information related to eligibility, including income, award of preferences for admission, expenses, family composition or rent
- Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program
- Has engaged in or threatened violent or abusive behavior toward OHA personnel

  Abusive or violent behavior towards OHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

  Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

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In making its decision to deny admission, OHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, OHA may, on a case-by-case basis, decide not to deny admission.

OHA will consider the existence of mitigating factors, such as loss of employment or other financial difficulties, before denying admission to an applicant based on the failure to meet prior financial obligations.

3-III.D. SCREENING

Screening for Eligibility OHA is authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program. This authority assists OHA in complying with HUD requirements and OHA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records OHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

OHA may not pass along to the applicant the costs of a criminal records check [24 CFR 960.204(d)].

OHA will perform criminal background checks through local law enforcement for all adult household members.

If the results of the criminal background check indicate there may have been past criminal activity, but the results are inconclusive, OHA will request a fingerprint card and will request information from the National Crime Information Center (NCIC).

OHA is required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 982.553(a)(2)(i)].

If OHA proposes to deny admission based on a criminal record or on lifetime sex offender registration information, OHA must notify the household of the proposed action and must provide the subject of the record a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to a denial of admission [24 CFR 5.903(f) and 5.905(d)].

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Screening for Suitability as a Tenant [24 CFR 982.307]

OHA has no liability or responsibility to the owner for the family's behavior or suitability for tenancy.

The owner is responsible for screening and selection of the family to occupy the owner's unit. OHA must inform the owner that screening and selection for tenancy is the responsibility of the owner. An owner may consider a family's history with respect to factors such as: payment of rent and utilities, caring for a unit and premises, respecting the rights of other residents to the peaceful enjoyment of their housing, criminal activity that is a threat to the health, safety or property of others, and compliance with other essential conditions of tenancy.

OHA is required by HUD to provide prospective owners with the family's current and prior address (as shown in OHA records) and the name and address (if known) of the owner at the family's current and prior addresses. OHA will not provide criminal history information to prospective owners. OHA will only offer to provide the same types of information to all families and to all owners. (See Section 3-III-G. for **PHA Confidentiality Requirements** involving VAWA cases).

OHA must give applicant families a statement of policy on providing information to owners. The statement will be included in the information packet that is given to a family selected to participate in the program.

Screening Employee Applicants/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 standards are to be employed in all such circumstances.

Neither 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.

Employees shall be responsible for reporting to the Department Director, the Director of Human Resources and the Deputy Executive Director, or his or her, designee 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 Department Director, Director of Human Resources and the Deputy Executive Director for a determination.

It shall be the responsibility of the Deputy Executive Director or his designee to ensure that any actions or decisions taken within his or her 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. OHA 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 OHA or her/his relationship to an OHA employee. As such:

- Each initial determination of eligibility and each selection to a program of an OHA employee or a relative of an OHA employee shall be forwarded to the Deputy Executive Director, or his or her designee, for review and final approval. The Deputy Executive Director, or his or her designee, will also sign a certification stating that all determinations and actions taken have been reviewed pursuant to applicable policies and procedures.

- Any time action is taken or a decision is made which affects the applicant or participant status of an OHA employee or a relative of an OHA employee in any way, all paperwork must be received and signed by the appropriate Department Director before the action or decision becomes effective.

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3-III.E. CRITERIA FOR DECIDING TO DENY ADMISSION

Evidence [24 CFR 982.553(c)]

OHA will use the concept of the preponderance of the evidence as the standard for making all admission decisions.

> *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.

Consideration of Circumstances [24 CFR 982.552(c)(2)]

HUD authorizes PHAs to consider all relevant circumstances when deciding whether to deny admission based on a family's past history except in the situations for which denial of admission is mandated (see Section 3-III.B).

OHA will consider the following factors when making its decision:

The seriousness of the case, especially with respect to how it would affect other residents;

The effects that denial of admission may have on other members of the family who were not involved in the action or failure;

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor, a person with disabilities, or (as discussed further in section 3-III.G) a victim of domestic violence, dating violence or stalking;

The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future; and

In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully.

OHA will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

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Removal of a Family Member's Name from the Application [24 CFR 982.552(c)(2)(ii)]

HUD permits PHAs to impose as a condition of admission, a requirement that family members who participated in or were culpable for an action or failure to act which warrants denial of admission, to not reside in the unit.

As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the assisted unit.

After admission to the program, the family must present evidence of the former family member's current address upon OHA request.

Reasonable Accommodation [24 CFR 982.552(c)(2)(iv)]

If the family includes a person with disabilities, OHA's decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of admission, OHA will determine whether the behavior is related to the disability. If so, upon the family's request, OHA will determine whether alternative measures are appropriate as a reasonable accommodation. OHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of admission. See Chapter 2 for a discussion of reasonable accommodation.

3-III.F. NOTICE OF ELIGIBILITY OR DENIAL

If the applicant family is eligible for assistance, OHA will notify the applicant when it extends the invitation to attend the voucher briefing appointment, as discussed in Chapter 5.

If OHA determines that an applicant family is not eligible for the program for any reason, the applicant must be notified promptly. The notice must describe (1) the reasons for which assistance has been denied (2) the applicant's right to an informal review, (3) the process for obtaining the informal review [24 CFR 982.554 (a)] and (4) the protections discussed in section 3-III.G. See Chapter 16, for informal review policies and procedures.

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 accompany the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before OHA can move to deny the application. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)]. OHA must give the subject of record an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.553(d)]

OHA Policy

If, based on general suitability, a criminal record, or sex offender registration information, an applicant appears to be ineligible, OHA will notify the applicant in writing of the proposed denial. The applicant will be given 10 business days to dispute the accuracy and relevance of the information. If the applicant does not contact OHA to dispute the information within 10 business days, OHA will proceed with issuing the notice of denial of admission. An applicant that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.

The OHA notification of denial will include a reminder of the family's right to bring counsel and to referral information for local legal services organizations.

Notice requirements related to denying admission to noncitizens are contained in Section 3-II.B.

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3-III.G. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING [24 CFR Part 5, Subpart L]

The Violence Against Women Reauthorization Act of 2005 (VAWA) prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of actual or threatened domestic violence, dating violence, or stalking. Specifically, Section 606(1) of VAWA adds the following provision to Section 8 of the U.S. Housing Act of 1937, which lists contract provisions and requirements for the housing choice voucher program:

That an applicant or participant is or has been a victim of actual or threatened domestic violence, dating violence, or stalking is not an appropriate reason for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission [24 CFR 5.2005].

Definitions [24CFR5.2003]

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 ***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, 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 California.

California law defines ***domestic violence*** as abuse perpetrated against the victim by:

The victim's spouse or former spouse.

Someone the victim lives with or lived with in the past.

Someone the victim is dating or has dated.

Someone the victim has a child with.

Someone to whom the victim is related by blood, marriage, or adoption (including, but not limited to, the victim's parent, grandparent, child, grandchild, brother, or sister).

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

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The term ***stalking*** means:

- To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
- To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
- 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 (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

The term ***immediate family member*** means, with respect to a person:

- A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or
- Any other person living in the household of that person and related to that person by blood and marriage.

Notification and Victim Documentation

OHA Policy

OHA acknowledges that a victim of domestic violence, dating violence, or stalking may have an unfavorable history that would warrant denial under OHA's policies. Therefore, if OHA makes a determination to deny admission to an applicant family, OHA will include in its notice of denial a statement of the protection against denial provided by VAWA and will offer the applicant the opportunity to provide a statement or documentation affirming that domestic violence, dating violence, or stalking played a role in causing the basis for ineligibility. In accordance with OHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

An individual may satisfy the documentation request in any of the following ways:

1. Completing a HUD-approved certification form (such as Form HUD-50066) or signed statement verifying that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of actual or threatened abuse. OHA will work with the victim to ensure that delivery of the certification form does not endanger the victim's safety. OR

2. Providing the requesting owner, manager, or OHA with documentation signed by any of the following third parties: (a) an employee, agent, or volunteer of a victim service provider; (b) an attorney; (c) a medical professional; or (d) other knowledgeable professional. The person signing the documentation must have assisted the victim in addressing domestic violence, dating violence, or stalking, or the effects of the abuse. The person signing the documentation must attest under penalty of perjury to his or her belief that the incident or incidents in question are bona fide incidents of abuse. The victim of domestic violence, dating violence, or stalking must also sign the documentation. OR

3. Producing a Federal, State, tribal, territorial, or local police or court record.

The applicant may submit the requested documentation with her or his request for an informal review (see section 16-III.D) or request an extension in writing at that time. If the applicant so requests, the PHA will grant an extension of 10 business days, and will postpone scheduling the applicant's informal review until after it has received the documentation or the extension period has elapsed. If after reviewing the documentation provided by the applicant OHA determines the family is eligible for assistance, no informal review will be scheduled and the PHA will proceed with admission of the applicant family.

Nothing in this Plan shall be construed to require the PHA to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, or stalking in order to receive any of the benefits provided in this section. At their discretion, the PHA may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.

Perpetrator Removal or Documentation of Rehabilitation

OHA Policy

In cases where an applicant family includes the perpetrator as well as the victim of domestic violence, dating violence, or stalking, OHA will proceed as above but will require, in addition, either (a) that the perpetrator be removed from the applicant household and not reside in the assisted housing unit or (b) that the family provide documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment.

If the family elects the second option, the documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation. This additional documentation must be submitted within the same time frame as the documentation required above from the victim.

PHA Confidentiality Requirements

If because of safety concerns a victim of domestic violence, dating violence, or stalking is unwilling or unable to provide information or identification ordinarily required to confirm eligibility, efforts will be made to otherwise establish eligibility and alternative sources and methods of verification will be accepted.

All information provided to the PHA regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared database nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law. If disclosure is required for use in an eviction proceeding or is otherwise required

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by applicable law, the PHA will inform the victim before disclosure occurs so that safety risks can be identified. If disclosure of the information would place the victim's safety at risk, the PHA will work with the victim to determine whether there are alternatives to disclosure.

EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

Person with Disabilities [24 CFR 5.403]

The term *person with disabilities* means a person who has any of the following types of conditions:

- Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:

  Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; *or*

  In the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

  (A) In General

  The term "developmental disability" means a severe, chronic disability of an individual that:

  (i) is attributable to a mental or physical impairment or combination of mental and physical impairments;

  (ii) is manifested before the individual attains age 22;

  (iii) is likely to continue indefinitely;

  (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) Self-care, (II) Receptive and expressive language, (III) Learning, (IV) Mobility, (V) Self-direction, (VI) Capacity for independent living, (VII) Economic self-sufficiency; and

  (v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

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(B) Infants and Young Children

An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

People with the acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for AIDS are not excluded from this definition.

A person whose disability is based solely on any drug or alcohol dependence does not qualify as a person with disabilities for the purposes of this program.

For purposes of reasonable accommodation and program accessibility for persons with disabilities, the term person with disabilities refers to an individual with handicaps.

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Individual with Handicaps [24 CFR 8.3]

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

(1) Physical or mental impairment includes:

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(2) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means:

(a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;

(b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

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EXHIBIT 3-2: DEFINITION OF INSTITUTION OF HIGHER EDUCATION [20 U.S.C. 1001 and 1002]

Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance; Notice [Federal Register, April 10, 2006]

Institution of Higher Education shall have the meaning given this term in the Higher Education Act of 1965 in 20 U.S.C. 1001 and 1002.

Definition of ''Institution of Higher Education'' From 20 U.S.C. 1001

(a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ''institution of higher education'' means an educational institution in any State that

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ''institution of higher education'' also includes—

(1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and

(2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

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Definition of ‘‘Institution of Higher Education’’ From 20 U.S.C. 1002

(a) Definition of institution of higher education for purposes of student assistance programs

(1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term ‘‘institution of higher education’’ for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—

(A) A proprietary institution of higher education (as defined in subsection (b) of this section);

(B) A postsecondary vocational institution (as defined in subsection (c) of this section); and

(C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.

(2) Institutions outside the United States

(A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—

(i) In the case of a graduate medical school located outside the United States—

(I)(aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and

(bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or

(II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or

(ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.

(B) Advisory panel

(i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—

(I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and

(II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

(ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

(C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.

(D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

(3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—

(A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;

(B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

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(C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or

(D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

(4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—

(A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or

(B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.

(6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

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(b) Proprietary institution of higher education

(1) Principal criteria. For the purpose of this section, the term ‘‘proprietary institution of higher education’’ means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;

(C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;

(D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;

(E) Has been in existence for at least 2 years; and

(F) Has at least 10 percent of the school’s revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.

(2) Additional institutions. The term ‘‘proprietary institution of higher education’’ also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) Postsecondary vocational institution.

(1) Principal criteria. For the purpose of this section, the term ‘‘postsecondary vocational institution’’ means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and

(C) Has been in existence for at least 2 years.

(2) Additional institutions. The term ‘‘postsecondary vocational institution’’ also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

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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.

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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-90026, Supplement to Application for Federally Assisted Housing, as part of the PHA's application.

> OHA Policy
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> 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).

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4-I.D. PLACEMENT ON THE WAITING LIST

The PHA must review each completed application received and make a preliminary assessment of the family's eligibility. The PHA must place on the waiting list 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, the PHA 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.

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. After applications are no longer being accepted, OHA will take applications that are submitted and randomly assigned a lottery number to each application. If more than 5,000 applications are received, the lottery will first randomly select a maximum of 5,000 applicants for placement on the waiting list. Families not selected by the lottery for placement on the waiting list, will be notified within 45 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 45 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 5,000 families selected for placement on the waiting list in within 45 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. 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.

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,

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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.).**

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),

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- 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;

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(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.

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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.

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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).

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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.

Single Fund Budget with Full Flexibility: 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.***

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.

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OHA Policy (MTW)

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.

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

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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 to 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.

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.*

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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 Veterans** 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 to limited 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 18-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 families per calendar year.
- 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

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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.

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)].

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

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- 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 30% of the area median income. 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)].

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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 it 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 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.

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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.

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 LEP plan. 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. FINAL ELIGIBILITY DETERMINATION

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 promptly 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.

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Chapter 5

BRIEFINGS AND VOUCHER ISSUANCE

INTRODUCTION

This chapter explains the briefing and voucher issuance process. When a family is determined to be eligible for the Housing Choice Voucher (HCV) program, OHA must ensure that the family fully understands the way the program operates and the family's obligations under the program. This is accomplished through both an oral briefing and provision of a briefing packet containing written documentation of information the family needs to know. Once the family is fully informed of the program's requirements, OHA issues the family a voucher. The voucher includes the unit size the family qualifies for based on OHA's subsidy standards, as well as the dates of issuance and expiration of the voucher. The voucher is the document that permits the family to begin its search for a unit, and limits the amount of time the family has to successfully locate an acceptable unit.

This chapter describes HUD regulations and OHA policies related to these topics in two parts:

> Part I: Briefings and Family Obligations. This part details the program's requirements for briefing families orally, and for providing written materials describing the program and its requirements. It includes a particular focus on the family's obligations under the program.
>
> Part II: Subsidy Standards and Voucher Issuance. This part discusses OHA's standards for determining how many bedrooms a family of a given composition qualifies for, which in turn affects the amount of subsidy the family can receive. It also discusses the policies that dictate how vouchers are issued, and how long families have to locate a unit.

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, 982503 and 982.518, as necessary to implement the Agency's Annual MTW Plan.*

PART I: BRIEFINGS AND FAMILY OBLIGATIONS

5-I.A. OVERVIEW

HUD regulations require PHAs to conduct mandatory briefings for applicant families. The briefing provides a broad description of owner and family responsibilities, explains OHA's procedures, and includes instructions on how to lease a unit. This part describes how oral briefings will be conducted, specifies what written information will be provided to families, and lists the family's obligations under the program.

5-I.B. BRIEFING

OHA must give the family an oral briefing and provide the family with a briefing packet containing written information about the program. Families may be briefed individually or in groups. At the briefing, OHA must ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973), and ensure that the briefing site is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

OHA Briefings will be conducted in group meetings.

The head of household is required to attend the briefing. If the head of household is unable to attend, OHA may approve another adult family member to attend the briefing.

Families that attend group briefings and still need individual assistance will be referred to the appropriate HA staff person.

Briefings will be conducted in English. For limited English proficient (LEP) applicants, OHA will provide translation services in accordance with OHA's LEP plan (See Chapter 2).

Notification and Attendance

Families will be notified of their eligibility for assistance at the time they are invited to attend a briefing. The notice will identify who is required to attend the briefing, as well as the date and time of the scheduled briefing.

If the notice is returned by the post office with no forwarding address, a notice of denial (see Chapter 3) will be sent to the family's address of record, as well as to any alternate address provided on the initial application.

Applicants who fail to attend a scheduled briefing will automatically be scheduled for another briefing. OHA will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without OHA approval, will be denied assistance (see Chapter 3).

Oral Briefing [24 CFR 982.301(a)]

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works;
- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside OHA's jurisdiction;
- For families eligible under portability, an explanation of portability. OHA cannot discourage eligible families from moving under portability;
- For families living in high-poverty census tracts, an explanation of the advantages of moving to areas outside of high-poverty concentrations; and
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

Briefing Packet [24 CFR 982.301(b)]

Documents and information provided in the briefing packet must include the following:

- The term of the voucher, and OHA's policies on any extensions or suspensions of the term. If OHA allows extensions, the packet must explain how the family can request an extension.
- A description of the method used to calculate the housing assistance payment for a family, including how OHA determines the payment standard for a family, how OHA determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how OHA determines the maximum allowable rent for an assisted unit.
- Where the family may lease a unit. For a family that qualifies to lease a unit outside OHA's jurisdiction under portability procedures, the information must include an explanation of how portability works.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy**,** and a description of the procedure for requesting approval for a tenancy.
- A statement of OHA's policy on providing information about families to prospective owners.
- OHA's subsidy standards including when and how exceptions are made.
- The HUD brochure on how to select a unit.
- The HUD pamphlet on lead-based paint entitled *Protect Your Family from Lead in Your Home.*

- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form.
- A list of landlords or other parties willing to lease to assisted families or help families find units, especially outside areas of poverty or minority concentration.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to OHA.
- The family obligations under the program, including any obligations of a welfare-to-work family.
- The grounds on which OHA may terminate assistance for a participant family because of family action or failure to act.
- OHA informal hearing procedures including when OHA is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.
- An explanation of how portability works, including a list of portability contact persons for neighboring PHAs including names, addresses, and telephone numbers.
- A written statement that the family has the right to select any eligible unit available for lease, and is not obligated to choose an OHA-owned unit if any OHA-owned units are available for lease.
- Information on how to fill out and file a housing discrimination complaint form.
- The publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.

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 these 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 must attend a Neighborhood Orientation Workshop **after** successfully leasing a unit and initial admission to the Section 8 HCV program. All other responsible adult family members in the applicant family household will be encouraged, but are not be required to attend a NOW workshop session.

Exceptions to this policy will be considered on a case-by-case basis subject to the approval by the Director of Leased Housing and in circumstances involving a reasonable accommodation for a person with a disability, upon approval by the Reasonable Accommodation Compliance Committee.

5-I.C. FAMILY OBLIGATIONS

Obligations of the family are described in the housing choice voucher (HCV) regulations and on the voucher itself. These obligations include responsibilities the family is required to fulfill, as well as prohibited actions. OHA must inform families of these obligations during the oral briefing, and the same information must be included in the briefing packet. When the family's unit is approved and the HAP contract is executed, the family must meet those obligations in order to continue participating in the program. Violation of any family obligation may result in termination of assistance, as described in Chapter 12.

Time Frames for Reporting Changes Required By Family Obligations

Unless otherwise noted below, when family obligations require the family to respond to a request or notify OHA of a change, notifying OHA of the request or change within 10 business days is considered prompt notice.

When a family is required to provide notice to OHA, the notice must be in writing.

Family Obligations [24 CFR 982.551]

Following is a listing of a participant family's obligations under the HCV program:

- The family must supply any information that OHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by OHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.
- The family must allow OHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.

- The family must not commit any serious or repeated violation of the lease.

  OHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction, or an owner's notice to evict.

  Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criteria to be used is whether the reason for the eviction was through no fault of the tenant or guests.

- The family must notify OHA and the owner before moving out of the unit or terminating the lease.

  The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to OHA at the same time the owner is notified.

- The family must promptly give OHA a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
- The composition of the assisted family residing in the unit must be approved by OHA. The family must promptly notify OHA in writing of the birth, adoption, or court-awarded custody of a child. The family must also promptly notify OHA in writing of the marriage of a household member. The family must request OHA approval to add any other family member as an occupant of the unit.
- The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. OHA will determine eligibility of the new member, including members added through marriage, in accordance with the policies in Chapter 3.
- The family must promptly notify OHA in writing if any family member no longer lives in the unit.
- If OHA has given approval, a foster child or a live-in aide may reside in the unit. OHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when OHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

  Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

- The family must supply any information requested by OHA to verify that the family is living in the unit or information related to family absence from the unit.

- The family must promptly notify OHA when the family is absent from the unit.

  Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to OHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide, under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and OHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and OHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless OHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE

5-II.A. OVERVIEW

OHA must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions. This part presents the policies that will be used to determine the family unit size (also known as the voucher size) a particular family should receive, and the policies that govern making exceptions to those standards. OHA also must establish policies related to the issuance of the voucher, to the voucher term, and to any extensions or suspensions of that term.

5-II.B. DETERMINING FAMILY UNIT (VOUCHER) SIZE [24 CFR 982.402]

For each family, OHA determines the appropriate number of bedrooms under OHA subsidy standards and enters the family unit size on the voucher that is issued to the family. The family unit size does not dictate the size of unit the family must actually lease, nor does it determine who within a household will share a bedroom/sleeping room.

The following requirements apply when OHA determines family unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under the housing quality standards.
- The subsidy 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 to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size.
- Unless a live-in-aide resides with a family, the family unit size for any family consisting of a single person must be a one-bedroom unit.
- OHA will assign one bedroom for each two persons within the household, except in the following circumstances:

  The Head of Household, if single, will be assigned their own bedroom and then one bedroom will be assigned for each remaining two persons within the household.

  Live-in aides will be allocated a separate bedroom.

  Single person families will be allocated one bedroom.

- OHA will reference the following charts in determining the appropriate voucher size for a family:

A family with a Head of Household and **no** spouse/significant other would be allocated a subsidy size in the following manner:

Family Size	Voucher Size
1	1 Bedroom
2	2 Bedrooms
3	2 Bedrooms
4	3 Bedrooms
5	3 Bedrooms
6	4 Bedrooms
7	4 Bedrooms
8	5 Bedrooms

A family with a Head of Household and **a** spouse/significant other would be allocated a subsidy size in the following manner:

Family Size	Voucher Size
2	1 Bedroom
3	2 Bedrooms
4	2 Bedrooms
5	3 Bedrooms
6	3 Bedrooms
7	4 Bedrooms
8	4 Bedrooms
9	5 Bedrooms

5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS

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 [24 CFR 982.402(b)(8)]. 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

For a single person who is not elderly, disabled, or a remaining family member, an exception cannot override the regulatory limit of a zero or one bedroom [24 CFR 982.402(b)(8)].

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.

5-II.D. VOUCHER ISSUANCE [24 CFR 982.302, OHA MTW Policy]

When a family is selected from the waiting list (or as a special admission as described in Chapter 4), or when a participant family wants to move to another unit, OHA issues a Housing Choice Voucher, form HUD-52646. This chapter deals only with voucher issuance for applicants. For voucher issuance associated with moves of program participants, please refer to Chapter 10.

The voucher is the family's authorization to search for housing. It specifies the unit size for which the family qualifies, and includes both the date of voucher issuance and date of expiration. It contains a brief description of how the program works and explains the family obligations under the program. The voucher is evidence that OHA has determined the family to be eligible for the program, and that OHA expects to have money available to subsidize the family if the family finds an approvable unit. However, OHA does not have any liability to any party by the issuance of the voucher, and the voucher does not give the family any right to participate in OHA's housing choice voucher program [Voucher, form HUD-52646]

A voucher can be issued to an applicant family only after OHA has determined that the family is eligible for the program based on information received within the 120 days prior to issuance [24 CFR 982.201(e), OHA MTW policy] and after the family has attended an oral briefing [HCV 8-1]. Vouchers will be issued to eligible applicants immediately following the mandatory briefing.

OHA will have sufficient funds to house an applicant before issuing a voucher. If funds are insufficient to house the family at the top of the waiting list, OHA will wait until it has adequate funds before it calls another family from the list [HCV GB p. 8-10].

Prior to issuing any vouchers, OHA will determine whether it has sufficient funding in accordance with the policies in Part VIII of Chapter 16.

If OHA determines that there is insufficient funding after a voucher has been issued, OHA may rescind the voucher and place the affected family back on the waiting list.

5-II.E. VOUCHER TERM, EXTENSIONS, AND SUSPENSIONS

Voucher Term [24 CFR 982.303]

The initial voucher term will be 90 calendar days. The initial term must be stated on the voucher [24 CFR 982.303(a)].

The family must submit a Request for Tenancy Approval and proposed lease within the 90-day period unless OHA grants an extension.

Initial Term – Incoming Portables

OHA will issue all incoming portables a voucher with an expiration date that matches that given by the initial housing authority. OHA will not grant any extensions to this term. The incoming client will have to seek an extension from the initial housing authority. However, as a reasonable accommodation for disabled clients, OHA will coordinate this contact with the initial authority if the client so requests.

Extensions of Voucher Term [24 CFR 982.303(b)]

OHA will approve extensions to the voucher term only in the following circumstances:

- If an applicant or participant needs and requests an extension of the voucher term as a reasonable accommodation to make the program accessible to and usable by a family member with disabilities, OHA will extend the voucher term up to the term reasonably required for that purpose.
- If OHA determines that an applicant or participant needs additional search time beyond the initial term due to reasons beyond the family's control, as determined by OHA. Following is a list of extenuating circumstances that OHA may consider in making its decision. The presence of these circumstances does not guarantee that an extension will be granted:

  Serious accident, illness or death in the family

  Other family emergency

  Obstacles due to employment

  Whether family size or other special requirements make finding a unit difficult

- Any request for an additional extension must include the reason(s) an additional extension is necessary. OHA may require the family to provide documentation to support the request.
- All requests for extensions to the voucher term must be made in writing and submitted to OHA prior to the expiration date of the voucher (or extended term of the voucher).
- OHA will decide whether to approve or deny an extension request within 15 business days of the date the request is received, and will immediately provide the family written notice of its decision. OHA's decision to deny a request for an extension of the voucher term is not subject to informal review [24 CFR 982.554(c)(4)].

- The Authority may require additional conditions as part of any extension, such as weekly reporting or insisting that voucher holders receiving an extension work with OHA's Outreach Coordinator.
- If an extension is approved, OHA will grant a one time extension for up to a maximum of 60 additional calendar days, starting on the day after the voucher expires. There can be no break in the term of the voucher, i.e. the family may not request for the extension days to be restored at a later time. The cumulative initial voucher term plus the extension may not exceed a total of 180 days. Exception to this policy may be approved on a case by case basis by the Assistant Director of Leased Housing

Suspensions of Voucher Term [24 CFR 982.303(c)]

Upon submittal of a completed *Request for Tenancy Approval* (RTA) form, OHA will suspend the term of the voucher. "Suspension" means stopping the clock on a family's voucher term from the time a family submits the RTA until the time OHA approves or denies the request [24 CFR 982.4]. OHA will suspend the term until the date the Authority either approves or denies the RTA. This policy allows families the full term to find a unit, and does not penalize the family for the number of days during which OHA is considering their request. A family may not submit a second RTA before OHA finalizes action on the first RTA. The number of days that a voucher is suspended is added on to the consecutive days, starting on the day after the voucher expires. There can be no break in the term of the voucher, i.e. the family may not request for suspended days to be restored at a later time. OHA's determination not to suspend a voucher term is not subject to informal review [24 CFR 982.554(c)(4)].

Expiration of Voucher Term

Once a family's housing choice voucher term (including any suspensions and extensions) expires, the family is no longer eligible to search for housing under the program. If an applicant family's voucher term expires before the family has submitted an approved Request for Tenancy Approval (RTA), OHA will require the family to reapply for assistance when the wait list is next opened.

Within 10 business days after the expiration of the voucher term or any extension, OHA will notify the family in writing that the voucher term has expired and that the family must reapply in order to be placed on the waiting list.

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 PHA'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, 982503 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.

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].

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.

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].

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

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].

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.

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 50 percent or more 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 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 or that neither a parent nor a designated guardian remains in a household receiving assistance, OHA will take the following actions:

- 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.
- If a responsible agency has determined that another adult is to be brought into the unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made. If after 90 days has elapsed, and no formal custody or legal guardianship has been established, OHA, at their discretion, may extend the caretaker's status as an eligible visitor up to additional 90 days with proof of owner authorization. If at the end of 180 days and no determination of custody or legal guardianship is made, the HAP contract will be cancelled and the family will be terminated.
- If a caretaker has assumed responsibility for a child without the involvement of a responsible agency, formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. During the initial 90 day period, the caretaker must consult with a responsible agency and seek formal custody or legal guardianship. If after 90 days has elapsed, and the caretaker has not consulted with a responsible agency and initiated the process to obtain formal custody or legal guardianship, the HAP contract will be cancelled and the family will be terminated. If after 90 days has elapsed, and a responsible agency has not yet established formal custody or legal guardianship, OHA, at their discretion, may extend the caretaker's status as an eligible visitor up to additional 90 days with proof of owner authorization. If at the end of 180 days and no determination of custody or legal guardianship is made, the HAP contract will be cancelled and the family will be terminated.
- At any time that custody or guardianship legally has been awarded to a caretaker, the lease must be transferred to the caretaker, as head of household (subject to the caretaker meeting all OHA eligibility admissions criteria for Section 8 program participation).
- 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.
- If a caretaker removes the remaining minors from the subsidized unit, the HAP contract will be cancelled and the family will be terminated.
- Only a Head of Household (HOH) 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 Caretakers for a Child Rule Only.

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)]

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/hour × 40 hours × 7 weeks) + ($6.25 × 40 hours × 45 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.

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

HUD strongly recommends the use of up-front income verification. UIV is "the verification of income, before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals" [PIH Notice 2004-01 Verification Guidance ("VG"), p. 7].

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

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 with 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)]***

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.

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)] <u>except</u> 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 <u>Not</u> 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].

> <u>OHA Policy</u>
>
> 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:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b))
- Awards under the federal work-study program (20 U.S.C. 1087 uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- 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]

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 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.

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 "prior income."

OHA defines *prior income,* or *prequalifying income,* as the family member's last certified income prior to qualifying for the EID.

The family member's prior, or prequalifying, income remains constant throughout the period that he or she is receiving the EID.

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.

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 Phase-In

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.

During the 48-month eligibility period, OHA will 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).

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].

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.

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.

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.

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

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.

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.

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.

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), **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 HUD-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.

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 fund.

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."

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 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.

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

Families must sign a declaration form at initial certification and each annual 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.

In determining the value of a checking account, OHA will use the average monthly balance for the last six months.

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.

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 and PH, p. 121].

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

- Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]
- 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)]
- Equity in owner-occupied cooperatives and manufactured homes in which the family lives [HCV GB, p. 5-25]
- 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-I.F
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

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.

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.

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].

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)].

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.

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 [CFR 5.609(b)(4)]. 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 [FR Notice 11/24/08].

Periodic Payments Excluded from Annual Income

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].

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)]

Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]

Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]

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.

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)].

Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [FR Notice 11/24/08].

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 a public housing resident 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)].

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)]

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) and FR 4/10/06]

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 certificate 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 PHA 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* will have the meaning given this term by the institution of higher education in which the student is enrolled.

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.

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:

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- 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)]
- 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)]
- 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)]
- Adoption assistance payments in excess of $480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- 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)]
- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17)]. 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) 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 $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)

(i) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))

(j) 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.)

(k) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)

(l) 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)

(m) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))

(n) 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)

(o) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))

(p) 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)

(q) 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)

(r) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

(s) Kinship Payments - Kinship payments are foster care subsidies for children living with a related legal guardian. Previously, Public Housing Agencies (PHAs) included California's Kinship Guardian Assistant Payments (Kin-GAP) as income when determining annual household income. Congress and housing advocates sought our interpretation of the income criteria in order to remove a disincentive towards family unification and to treat Kin-GAP the same as foster care payments. (PIH 2008-40)

(t) Deferred Department of Veteran Affairs (VA) disability benefits that are received in a lump sum or in prospective monthly amounts. [Section 2608 of Title VI of Division B of the Housing and Economic Recovery Act (HERA) July 30, 2008]

PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

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.

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

Anticipating Expenses

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].

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."

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

Summary of Allowable Medical Expenses from IRS Publication 502	
Services of medical professionals Surgery and medical procedures that are necessary, legal, noncosmetic Services of medical facilities Hospitalization, long-term care, and in-home nursing services Prescription medicines and insulin, but <u>not</u> nonprescription medicines even if recommended by a doctor Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)	Substance abuse treatment programs Psychiatric treatment Ambulance services and some costs of transportation related to medical expenses The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth) Cost and continuing care of necessary service animals Medical insurance premiums or the cost of a health maintenance organization (HMO)
Note: This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.	

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.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.

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

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.

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 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

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 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

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

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

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].

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

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.

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

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 PHA

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.

Welfare Rent [24 CFR 5.628]

Welfare rent does not apply in OHA's jurisdiction.

Minimum Rent [24 CFR 5.630]

The minimum rent for OHA's clients is $50.

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 [24 CFR 982.514(b)]

When OHA's subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement. OHA will make utility reimbursements to the family.

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.

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.

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.

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

Implementation of 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 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 PHA has established a minimum rent of $35.	
Family Share – No Hardship	**Family Share – With Hardship**
$0 30% of monthly adjusted income $15 10% of monthly gross income N/A Welfare rent $50 Minimum rent	$0 30% of monthly adjusted income $15 10% of monthly gross income N/A Welfare rent $50 Minimum rent
Minimum rent applies. TTP = $50	Hardship exemption granted. TTP = $15

To qualify for a hardship exemption, 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 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 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.

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

(1) At an interim or annual 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]

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 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, 982503 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 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.

Families requiring or requesting interim reexaminations will not have their HAP payments calculated using the higher payment standard until their next annual reexamination [HCV GB, p. 7-8].

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

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, OHA is allowed to establish a higher payment standard for the family within the basic range.

If the payment standard amount has i*ncreased* as a result of a reasonable accommodation, the increased payment standard will be applied at the effective date of the reasonable accommodation.

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 [24 CFR 982.517]

Overview

An OHA-established utility allowance schedule is used in determining family share and OHA subsidy. OHA must use the appropriate utility allowance for the size of dwelling unit actually leased by a family rather than the voucher unit size for which the family qualifies using OHA subsidy standards. See Chapter 5 for information on OHA's subsidy standards.

For policies on establishing and updating utility allowances, see Chapter 16.

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 must use its current 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 annual reexamination that is effective after the allowance is adopted.

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. For example, if OHA subsidy for a family is calculated at $500 and two of four family members are ineligible, OHA subsidy would be reduced to $250.

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 260.31[1]; and

(B) Are not otherwise excluded under paragraph (c) of this section.

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

(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:

(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 PHA 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 PHA'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 increase in annual 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.

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 cumulative twelve 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. During the second cumulative twelve month period after 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 of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(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 PHA 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 PHA, the welfare agency will inform the PHA 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 PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA 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 PHA'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 PHA 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 PHA 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 PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA 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 PHA 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 PHA 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 PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) *PHA relation with welfare agency.*

(1) The PHA must ask welfare agencies to inform the PHA 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 PHA 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 PHA 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 PHA. However, the PHA 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 PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

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Chapter 7

VERIFICATION

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230

INTRODUCTION

PHAs 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.

PHAs must follow the verification guidance provided by HUD in PIH Notice 2004-01 Verification Guidance ("VG") 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 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 960.259(a)(1)].

Consent Forms

It is required that all adult applicants and tenants sign form HUD-9886, Authorization for Release of Information and OHA 290103, Authorization Release Form. The purpose of 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.

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 [VG, p. 11-14]

HUD authorizes OHA to use five 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.

OHA Policy

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

1. Up-front Income Verification (UIV) whenever available
2. Third-party Written Verification/Third Party Oral Verification
3. Review of Documents
4. Self-Certification

Each of the verification methods is discussed in subsequent sections below. Exhibit 7-1 at the end of the chapter contains an excerpt from the Verification Guidance that provides guidance with respect to how each method may be used.

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. 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.

OHA staff member who views the original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.

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.

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

Up-front income verification (UIV) refers to a PHA'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 safeguard 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.

Definition of Substantial Difference

UIV information is used differently depending upon whether there is a *substantial difference* between information provided by the family and the UIV information. In "HUD Guidelines for Projecting Annual Income When UIV Data is Available," HUD recommends using $200 per month as the threshold for a substantial difference. OHA will use the $200 per month as the threshold for a substantial difference.

See Chapter 6 for OHA's policies on the definition of substantial difference and the use of UIV to project annual income and for OHA's threshold for substantial difference.

When No Substantial Difference Exists

If UIV information does not differ substantially from family information, the UIV documentation may serve as third-party written verification.

When a Substantial Difference Exists [24 CFR 5.236(b)]

When there is a substantial difference between the information provided by the UIV source and the family, OHA will request another form of third-party written verification and use any other verification methods (in priority order) to reconcile the difference(s).

Use of HUD's Enterprise Income Verification (EIV) System

HUD's 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 reports and "exceeds threshold" reports.

Tenant Income Data (TID) Reports

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

OHA Policy

> OHA will obtain TID reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.
>
> TID reports will be compared to family-provided information as part of the annual reexamination process. TID reports may be used in the calculation of annual income, as described in Chapter 6.I.C. TID reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between TID reports and family-provided information will be resolved as described in Chapter 6.I.C. and in this chapter.
>
> TID reports will be used in interim reexaminations when it is necessary to verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits.
>
> TID reports will be retained in participant files with the applicable annual or interim reexamination documents.
>
> When OHA determines through TID 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.

Exceeds Threshold Reports (ETRs)

The ETR is a tool for identifying families who may have concealed or under-reported income. Data in the ETR represents income for past reporting periods and may be between 6 months and 30 months old at the time ETRs are generated.

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

OHA Policy

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

In reviewing ETRs, OHA will begin with the largest discrepancies.

When OHA determines that a participant appearing on the ETR 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 ETR processing until a subsequent interim or annual reexamination has been completed.

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 ETR 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.

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 as part of the annual reexamination process.

OHA will attempt to resolve PIC/SSA discrepancies by 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 promptly.

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.***

OHA Policy

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. Regarding third-party oral verification, OHA 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. Third-party verification will be requested only once and if it is not returned with in 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.

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

If a third party agrees to confirm in writing the information provided orally, OHA will wait no more than 5 business days for the information to be provided. If the information is not provided by the 6th business day, OHA will use any information provided orally in combination with reviewing family-provided documents.

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

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.

Certain Assets and Expenses

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 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 Policy
>
> 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 12 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
- 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

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.

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.S. passport or 3. U.S. Military Identification Cards or 4. Permanent Residence ID or 5. Employer identification card	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. School records

If none of primary documents are available for to establish legal identity for adults OHA will require three of either these documents:

- Original copy of a certificate of birth
- Church issued baptismal certificate
- U.S. military discharge (DD 214)
- Voter's registration card
- Company/agency identifications cards
- Hospital Records Identification

If none of these documents can be provided then the case would be forward to the Department Director who will make the determination based on regulations.

Legal identity will be verified on an as needed basis.

7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and HCV GB, p. 5-12 as amended by MTW]

Every family member must provide documentation of a valid social security number (SSN), or a self-certification stating that no SSN has been issued. The self-certification must be executed personally by any family member 18 or older, or by a parent or guardian for a minor.

OHA Policy

OHA will also accept the following documents as evidence if the SSN is provided on the document:

Driver's license

Other identification card issued by a federal, state, or local agency, a medical insurance company or provider, or employer or trade union

Payroll stubs

Benefit award letters from government agencies; retirement benefit letters; life insurance policies

Court records (real estate, tax notices, marriage and divorce, judgment or bankruptcy records)

An identification card issued by an employer or trade union

Earnings statements or payroll stubs

Bank statements

IRS Form 1099

Verification of benefits or Social Security Number from the Social Security Administration

If the family reports an SSN but cannot provide acceptable documentation of the number, OHA requires a self-certification stating that documentation of the SSN cannot be provided at this time. OHA will require documentation of the SSN within 60 calendar days from the date of the family member's self-certification mentioned above. If the family is an applicant, assistance cannot be provided until proper documentation of the SSN is provided.

OHA Policy

OHA will instruct the family to obtain a duplicate card from the local Social Security Administration (SSA) office.

For individuals who are at least 62 years of age and are unable to submit the required documentation of their SSN within the initial 60-day period, OHA will grant an additional 60 calendar days to provide documentation.

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

If any family member obtains an SSN after admission to the program, the new SSN must be disclosed at the next regularly scheduled reexamination.

The social security numbers of household members, such as live-in aids, must be verified for the purpose of conducting criminal background checks.

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

OHA Policy

Certification by the head of household is normally sufficient verification. If OHA has reasonable doubts about a marital relationship, the PHA will require the family to document the marriage.

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 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.*

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 prior year income tax returns to verify 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.

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 medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at www.os.dhhs.gov.

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 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.ssa.gov**. Once the applicant or resident receives the benefit verification letter they will be required to provide it to OHA.

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 available to 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 age 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.

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

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.

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

Social Security/SSI Benefits

OHA Policy

To verify the SS/SSI benefits of residents, OHA will obtain information about social security/SSI benefits through The HUD EIV System 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 ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from www.ssa.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

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 PHA verified this amount. Now the person reports that she has given this $10,000 to her son. The PHA 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 PHA 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. 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.

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 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

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 statues will be evaluated every 60 days.

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].

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 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 amount.

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 in accordance with PHA policy [24 CFR 5.612 and FR 4/10/06, p. 18146].

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:

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 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 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 Rehabilitation Agency 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.
- The costs claimed are not reimbursed.
- The costs enable a family member to 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: EXCERPT FROM HUD VERIFICATION GUIDANCE NOTICE (PIH 2004-01, pp. 11-14)

Upfront (UIV)	Highest (Highly Recommended, highest level of third party verification)
Written 3rd Party	High (Mandatory if upfront income verification is not available or if UIV data differs substantially from tenant-reported information)
Oral 3rd Party	Medium (Mandatory if written third party verification is not available)
Document Review	Medium-Low (Use on provisional basis)
Tenant Declaration	Low (Use as a last resort)

Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	(LEVEL 5)	(LEVEL 4)	(LEVEL 3)	(LEVEL 2)	(LEVEL 1)
Wages/Salaries	Use of computer matching agreements with a State Wage Information Collection Agency (SWICA) to obtain wage information electronically, by mail, fax or in person.	The HA mails, faxes or e-mails a verification form directly to the independent sources to obtain wage information.	In the event the independent source does not respond to the OHA's written request for information, the HA may contact the independent source by phone or make an in person visit to obtain the requested information.	When neither form of third-party verification can be obtained, the HA may accept original documents such as consecutive pay stubs (HUD recommends the HA review at least three months of pay stubs, if employed by the same employer for three months or more), W-2 forms, etc. from the tenant. The HA documents in the tenant file, the reason third-party verification was not available.	The HA may accept a notarized statement or affidavit from the tenant that declares the family's total annual income from earnings. The HA documents in the tenant file, the reason third- party verification was not available.
	Agreements with private vendors, agencies, such as The Work Number or ChoicePoint to obtain wage and salary information.	The HA may have the tenant sign a Request for Earnings Statement from the SSA to confirm past earnings. The HA mails the form to SSA and the statement will be sent to the address the HA specifies on the form.			

Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	(LEVEL 5)	(LEVEL 4)	(LEVEL 3)	(LEVEL 2)	(LEVEL 1)
Self-Employment	Not available	The HA mails or faxes a verification form directly to sources identified by the family to obtain income information.	The HA may call the source to obtain income information.	The HA may accept any documents (i.e. tax returns, invoices and letters from customers) provided by the tenant to verify self-employment income. The HA documents in the tenant file, the reason third-party verification was not obtained.	The HA may accept a notarized statement or affidavit from the tenant that declares the family's total annual income from self-employment. The HA documents in the tenant file, the reason third party verification was not available.
Social Security Benefits	Use of HUD Tenant Assessment SubSystem (TASS) to obtain current benefit history and discrepancy reports.	The HA mails or faxes a verification form directly to the local SSA office to obtain social security benefit information.	The HA may call SSA, with the tenant on the line, to obtain current benefit amount.	The HA may accept an original SSA Notice from the tenant. The HA documents in the tenant file, the reason third party verification was not available.	The HA may accept a notarized statement or affidavit from the tenant that declares monthly social security benefits. The HA documents the tenant file, the reason third party verification was not available.
Benefits	Use of computer matching agreements with the local Social Services Agency to obtain current benefit amount electronically, by mail, fax or in person.	The HA mails or faxes or e-mails a verification form directly to the local Social Services Agency to obtain welfare benefit information.	The HA may call the local Social Services Agency to obtain current benefit amount.	The HA may review an original award notice or printout from the local Social Services Agency provided by the tenant. The HA documents in the tenant file, the reason third party verification was not available.	The HA may accept a notarized statement or affidavit from the tenant that declares monthly welfare benefits. The HA documents in the tenant file, the reason third party verification was not available.

Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	(LEVEL 5)	(LEVEL 4)	(LEVEL 3)	(LEVEL 2)	(LEVEL 1)
Child Support	Use of agreement with the local Child Support Enforcement Agency to obtain current child support amount and payment status electronically, by mail or fax or in person.	The HA mails, faxes or e-mails a verification form directly to the local Child Support Enforcement Agency or child support payer to obtain child support amount and payment status .	The HA may call the local Child Support Enforcement Agency of child support payer to obtain current child support amount and payment status.	The HA may review an original court order, notice or printout from the local Child Support Enforcement Agency provided by the tenant to verify current child support amount and payment status. The HA documents in the tenant file, the reason third party verification was not available.	The HA may accept a notarized statement or affidavit from the tenant that declares current child support amount and payment status. The HA documents in the tenant file, the reason third party verification was not available.
Unemployment Benefits	Use of computer matching agreements with a State Wage Information Collection Agency to obtain unemployment compensation electronically, by mail or fax or in person.	The HA mails, faxes or e-mails a verification form directly to the State Wage Information Collection Agency to obtain unemployment compensation information.	The HA may call the State Wage Information Collection Agency to obtain current benefit amount.	The HA may review an original benefit notice or unemployment check stub, or printout from the local State Wage Information Collection Agency provided by the tenant. The HA documents in the tenant file, the reason third party verification was not available.	The HA may accept a notarized statement or affidavit from the tenant that declares unemployment benefits. The HA documents in the tenant file, the reason third party verification was not available.
	Use of HUD systems, when available.				
Pensions	Use of computer matching agreements with a Federal, State, or Local Government Agency to obtain pension information electronically, by mail or fax or in person.	The HA mails, faxes or e-mails a verification form directly to the pension provider to obtain pension information.	The HA may call the pension provider to obtain current benefit amount.	The HA reviews an original benefit notice from the pension provider provided by the tenant. Note: The HA staff must document provided by the tenant. Note: The HA must document the tenant file, the reason third-party verification was not available.	The HA may accept a notarized statement or affidavit from the tenant that declares monthly pension benefits. : The HA documents the tenant file, the reason third party verification was not available.

Upfront (UIV)	**Highest (Highly Recommended, highest level of third party verification)**
Written 3rd Party	**High (Mandatory if upfront income verification is not available or if UIV data differs substantially from tenant-reported information)**
Oral 3rd Party	**Medium (Mandatory if written third party verification is not available)**
Document Review	**Medium-Low (Use on provisional basis)**
Tenant Declaration	**Low (Use as a last resort)**

Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	(LEVEL 5)	**(LEVEL 4)**	**(LEVEL 3)**	**(LEVEL 2)**	**(LEVEL 1)**
Assets	Use of cooperative agreements with sources to obtain asset and asset income information electronically, by mail or fax or in person.	The HA mails faxes or e-mails a verification form directly to the source to obtain asset and asset income information.	The HA may call the source to obtain asset and asset income information.	The HA may review original documents by the tenant. Note: The HA must document provided by the tenant. The HA documents the tenant file, the reason third- party verification was not available.	The HA may accept a notarized statement or affidavit from the tenant that declare assets and asset income. The HA documents the tenant file, the reason third-party verification was not available.

Exhibit 7-2: Summary of Documentation Requirements for Noncitizens
[HCV GB, pp. 5-9 and 5-10)

<table>
<tr><td colspan="2">

- **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.

</td></tr>
<tr><td colspan="2">

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.

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All other Noncitizens

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

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<tr><td>

- Form I-551 Alien Registration Receipt Card (for permanent resident aliens)
- Form I-94 Arrival-Departure Record annotated with one of the following:
  - “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”

</td><td>

- Form I-94 Arrival-Departure Record with no annotation accompanied by:
  - 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).

</td></tr>
<tr><td>

- Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.

</td><td>

Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.

</td></tr>
</table>

- 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 *Federal Register*

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Chapter 8

HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subpart I and 24 CFR 982.507]

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits PHAs to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and OHA-established requirements. HQS inspections are required before the Housing Assistance Payments (HAP) Contract is signed and at least annually during the term of the contract.

HUD also requires PHAs to determine that units rented by families assisted under the HCV program have rents that are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and OHA requirements related to housing quality and rent reasonableness as follows:

> Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.
>
> Part II. The Inspection Process. This part describes the types of inspections OHA will make and the steps that will be taken when units do not meet HQS.
>
> Part III. Rent Reasonableness Determinations. This part discusses the policies OHA will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

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 may:

- Certify that housing assisted under MTW will meet housing quality standards established or approved by HUD. The certification form will be approved or provided by HUD. *This authorization waives certain provisions of Section 8(o)8 of the 1937 Act and 24 CFR 982, Subpart I as necessary to implement the Agency's Annual MTW Plan.*

- Authorized to adopt a local process for determining whether units meet certain eligibility requirements, provided such requirements are part of the 1937 Act. *This authorization waives certain provisions of Section 8(o)(13) of the 1937 Act and 24 CFR 983, Subpart D as necessary to implement the Agency's Annual MTW Plan.*

  This includes, but is not limited to:

  a. The minimum expenditure requirements and the timing of the rehabilitation and construction of units.

  b. The type of funds that may be used to rehabilitate or construct units.

  c. Procedures to determine whether or not units meet the Agency's requirements regarding rehabilitation and construction, including what information is required to be submitted by owners to the Agency.

PART I: PHYSICAL STANDARDS

8.I.A. GENERAL HUD REQUIREMENTS

HUD Performance and Acceptability Standards

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Attachment 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

Tenant Preference Items

HUD requires PHAs to enforce minimum HQS but also requires that certain judgments about acceptability be left to the family. For example, OHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic condition of the facilities is acceptable. Attachment 8-2 summarizes those items that are considered tenant preferences.

Modifications to Provide Accessibility

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained.[24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

OHA Policy

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to OHA for review.

8.I.B. ADDITIONAL LOCAL REQUIREMENTS

PHAs may impose additional quality standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choice. HUD approval is required if more stringent standards are imposed. HUD approval is not required if the PHA additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

OHA Policy

OHA will impose the additional quality standards listed below:

In each room used for living/sleeping, there will be at least one exterior window that can be opened.

Owners will be required to scrape peeling paint and repaint all surfaces cited for peeling paint with 2 coats of non-lead paint. An extension may be granted as a severe weather related item as defined below.

In units where the tenant must pay for utilities, each unit **must** have separate metering device(s) for measuring utility consumption and direct billing by the utility service provider.

A ¾" overflow pipe must be present on the hot water heater safety valves and installed down to within 6 inches of the floor.

The hot water heater must have an earthquake strap.

Gas water heaters require a safety divider or shield if they are located in a living/sleeping room. A safety divider or shield is not required if the water heater is located in the kitchen, as long as it does not present a safety hazard to the occupants.

Where window security bars are present in rooms used for living/sleeping, there must be at least one release mechanism in good working order in each room. Owners will be referred to the City of Oakland's Fire Prevention Bureau for additional requirements regarding smoke detector and any further guidance.

The address of the unit must be clearly displayed.

Each bedroom must have a closet.

Thermal Environment [HCV GB p.10-7]

The PHA must define a "healthy living environment" for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

OHA Policy

The heating system must be capable of maintaining an interior temperature of 68 degrees Fahrenheit between October 1 and May 1.

Clarifications of HUD Requirements

OHA Policy

As permitted by HUD, OHA has adopted the following specific requirements that elaborate on HUD standards.

Walls

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

Windows

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Window screens must be in good condition (applies only if screens are present).

Doors

All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold.

All interior doors must have no holes, have all trim intact, and be able to be opened without the use of a key.

Deadbolt locks on exterior doors and gates must be single cylinder. Locks must be able to be opened from the inside without a key.

Floors

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be re-secured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of baseshoe, trim, or sealing for a "finished look." Vinyl baseshoe is permitted.

Sinks

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

All sinks must have functioning stoppers.

Security

If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

Appliances

A refrigerator must have interior shelves and an oven must have interior racks.

Mailbox

Each unit must have its own mailbox that is clearly marked.

8.I.C. LIFE THREATENING CONDITIONS [24 CFR 982.404(a)]

HUD requires PHAs to define life-threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life-threatening conditions within 24 hours of PHA notification.

OHA Policy

The following are considered life-threatening conditions:

Any condition that jeopardizes the security of the unit

Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling

Natural or LP gas or fuel oil leaks

Any electrical problem or condition that could result in shock or fire

Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit

Utilities not in service, including no running hot water

Conditions that present the imminent possibility of injury

Obstacles that prevent safe entrance or exit from the unit

Absence of a functioning toilet in the unit

Inoperable smoke detectors

If an owner fails to correct life-threatening conditions as required by OHA, the housing assistance payment will be abated and the HAP contract will be terminated. See 8-II-G.

If a family fails to correct a family caused life-threatening condition as required by OHA, OHA may terminate the family's assistance. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless OHA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

8-I.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]

Family Responsibilities

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain family-supplied appliances
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. "Normal wear and tear" is defined as items which could not be charged against the tenant's security deposit under state law or court practice.

Owner Responsibilities

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

8-I-E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225]

If a PHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, the PHA must complete a risk assessment of the dwelling unit. The risk assessment must be completed in accordance with program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the risk assessment report from the PHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and the PHA will take action in accordance with Section 8-II.G.

OHA reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

OHA Policy

The Oakland Housing Authority has an established partnership and Memorandum of Understanding executed with the Alameda County Lead Poisoning Prevention Program (ACLPPP) for sharing and cross-referencing public health department records in identifying children having an environmental intervention blood levels and residing in Section 8 assisted properties. ACLPPP performs all lead hazard risk assessments at Section 8 assisted properties and OHA initiates any required HQS enforcement action with the participant landlord.

8-I-F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403]

If OHA determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, OHA must issue the family a new voucher, and the family and OHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, OHA must terminate the HAP contract in accordance with its terms.

PART II: THE INSPECTION PROCESS

8-II.A. OVERVIEW [24 CFR 982.405]

Types of Inspections

OHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections*. OHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP Contract.
- *Annual Inspections*. HUD requires OHA to inspect each unit under lease at least annually to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be re-inspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors.

Inspection of OHA-owned Units [24 CFR 982.352(b)]

OHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in an OHA-owned unit (including a unit owned by an entity substantially controlled by OHA). The independent agency must communicate the results of each inspection to the family and OHA. The independent agency must be approved by HUD, and may be the unit of general local government.

> <u>OHA Policy</u>
>
> OHA will use an independent entity approved by HUD to perform the required rent reasonableness determinations and housing quality standards (HQS) inspections in any unit where OHA has an identity of interest in the property. The rent determinations and HQS inspections may be preformed by a third party vendor contracted by the independent entity.

Inspection Costs

PHAs may not charge the family or owner for unit inspections [24 CFR 982.405(e)]. In the case of inspections of OHA-owned units, OHA may compensate the independent agency from ongoing administrative fee for inspections performed. OHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

Notice and Scheduling

The family must allow the PHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

OHA Policy

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life-threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 8:00 a.m. and 5:00 p.m. Generally inspections will be conducted on business days only. In the case of a life-threatening emergency, OHA will give as much notice as possible, given the nature of the emergency.

Attendance at inspections by owner and family

HUD permits PHAs to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

OHA Policy

When a family occupies the unit at the time of inspection an adult over the age of 18 must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, OHA will inspect the unit in the presence of the owner or owner's representative. The presence of the participant or a family representative is also required at an initial inspection.

8-II.B. INITIAL HQS INSPECTION [24 CFR 982.401(a)]

Timing of Initial Inspections

HUD requires the unit to pass HQS before the effective date of the lease and HAP Contract. HUD requires PHAs with 1,250 or more budgeted units, to the extent practicable, to complete such inspection and determination within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

OHA Policy

OHA will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 10 business days of submission of the Request for Tenancy Approval (RTA).

Inspection Results and Reinspections

OHA Policy

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by OHA for good cause. The owner has 10 business days from the date of notification to call OHA to request a reinspection. OHA will reinspect the unit within 10 business days of the date the owner notifies OHA that the required corrections have been made.

If the time period for correcting the deficiencies (or any PHA-approved extension) has elapsed, or the unit fails HQS at the time of the reinspection, OHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. OHA may agree to conduct a second reinspection, for good cause, at the request of the family and owner.

Following a failed reinspection, the family may submit a new Request for Tenancy Approval for the unit if the family has not found another unit by the time the owner completes all repairs and the family continues to wish to live in the unit.

Utilities

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

OHA Policy

If utility service is not available for testing at the time of the initial inspection, OHA will allow the utilities to be placed in service after the unit has met all other HQS requirements. OHA will reinspect the unit to confirm the utilities are on and all associated components and systems meet HQS before a HAP contract is executed.

Appliances

OHA Policy

If the family is responsible for supplying the stove and/or refrigerator, OHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before OHA executes the HAP contract. OHA will execute the HAP contract based upon a certification from the family and the landlord that the appliances have been installed and are working.

8.II.C. ANNUAL HQS INSPECTIONS [24 CFR 982.405(a)]

Scheduling the Inspection

Each unit under HAP contract must have an annual inspection no more than 12 months after the most recent inspection.

OHA Policy

If an adult over the age of 18 cannot be present on the scheduled date, the family should request that OHA reschedule the inspection. OHA and family will agree on a new inspection date that generally should take place within 10 business days of the originally-scheduled date. OHA may schedule an inspection more than 10 business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, OHA will automatically schedule a second inspection. If the family misses two scheduled inspections without OHA approval, OHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

Risk-Based Inspections

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.

Under MTW authority, OHA may implement Risk-Based Inspections protocol to in lieu of the HUD annual HQS inspection requirement for units assisted under the HVC program. All units rented by families assisted under the HCV program must meet HQS. Risk Based Inspections protocol only alters the frequency in which units are inspected. This protocol will be less intrusive for participant families and property owners that maintain units in good condition. Conversely, units that chronically fail to meet HQS will be inspected more often and units that chronically result in enforcement action may be barred from program participation and the owner may be limited or restricted from adding any additional contracts on to the program.

Risk-Based Inspection Protocol:

Annual inspection will be conducted as usual. The result of the annual inspection will result in one of the following outcomes:

1. Pass on first inspection

   Result: Schedule next inspection in 24 months

2. Pass on second inspection

   Result: Schedule next inspection in 12 months.

3. Fail on second inspection

   Result: Schedule next inspection in 6 months.

- Properties that pass their first inspection and are Housing Quality Standards (HQS) compliant need only be inspected bi-annually.
- Properties that fail on the first inspection and require a second inspection to meet Housing Quality Standards will continue on an annual inspection schedule to ensure compliance with the Housing Quality Standards.
- Properties that fail to pass Housing Quality Standards after 2 inspections will be inspected more frequently to encourage compliance with HQS. Semi-annual inspections will be required for the next year. (After two inspections that pass on the first or second inspection, the property may be place back on an annual or bi-annual inspection schedule.)

8-II.D. SPECIAL INSPECTIONS [HCV GB p. 10-30]

OHA will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit.

OHA Policy

During a special inspection, OHA generally will inspect only those deficiencies that were reported. However, the inspector will record any additional HQS deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the annual inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled OHA may elect to conduct a full annual inspection.

8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b), HCV GB p. 10-32]

HUD requires a PHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include:

(1) Each type of inspection (initial, annual, and special),

(2) Inspections completed by each inspector, and

(3) Units from a cross-section of neighborhoods.

8.II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT

Notification of Corrective Actions

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, OHA will determine (1) whether or not the failure is a life threatening condition and (2) whether the family or owner is responsible.

OHA Policy

When life-threatening conditions are identified, OHA will immediately notify both parties by telephone, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the OHA's notice.

When failures that are not life threatening are identified, OHA will send the owner and the family a written notification of the inspection results within 5 business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally not more than 30 days will be allowed for the correction.

The notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life threatening conditions are not corrected within the specified time frame (or any OHA-approved extension), the owner's HAP will be abated in accordance with OHA policy (see 8-II.G.). Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any OHA-approved extension, if applicable) the family's assistance will be terminated in accordance with OHA policy (see Chapter 12).

Extensions

For conditions that are life threatening, PHAs cannot grant an extension to the 24-hour corrective action period. For conditions that are not life threatening, a PHA may grant an exception to the required time frames for correcting the violation, if the PHA determines that an extension is appropriate [24 CFR 982.404].

OHA Policy

Extensions will be granted in cases where OHA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

A repair cannot be completed because required parts or services are not available.

A repair cannot be completed because of weather conditions.

A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case-by-case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

Reinspections

OHA Policy

OHA will conduct a reinspection immediately following the end of the corrective period, or any OHA approved extension.

The family and owner will be given reasonable notice of the reinspection appointment. If the deficiencies have not been corrected by the time of the reinspection, OHA will send a notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with OHA policies. If OHA is unable to gain entry to the unit in order to conduct the scheduled reinspection, OHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

8.II.G. ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with HQS, the PHA must take prompt and vigorous action to enforce the owner obligations.

HAP Abatement

If an owner fails to correct HQS deficiencies by the time specified by the PHA, HUD requires the PHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

> OHA Policy
>
> OHA will make all HAP abatements effective the first of the month following the expiration of the OHA specified correction period (including any extension).
>
> OHA will inspect abated units within 10 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction.

HAP Contract Termination

The PHA must decide how long any abatement period will continue before the HAP contract will be terminated. The PHA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. The PHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

> OHA Policy
>
> The maximum length of time that a HAP contract may be abated is 90 days. However, if the owner completes corrections and notifies OHA before the termination date of the HAP contract, OHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.
>
> Reasonable notice of HAP contract termination by OHA is 30 days.

8.II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by OHA (and any extensions), OHA will terminate the family’s assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

PART III: RENT REASONABLENESS [24 CFR 982.507]

8-III.A. OVERVIEW

No HAP contract can be approved until OHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

OHA-owned Units [24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in an OHA-owned unit, OHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. An OHA-owned unit is defined as a unit that is owned by OHA (including a unit owned by an entity substantially controlled by OHA). The independent agency must communicate the results of the rent reasonableness determination to the family and OHA. The independent agency must be approved by HUD.

8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED

Owner-initiated Rent Determinations

OHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

Initial Lease Term

The owner and family first negotiate the rent for a unit. OHA (or an independent agency in the case of OHA-owned units) will assist the family with the negotiations upon request. At initial occupancy OHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. OHA will notify the owner of the rent that can be approved based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. OHA will confirm the accuracy of the information provided. If the information submitted is accurate, OHA will consider this additional information along with its own comparability data when making rent determinations. The owner must submit any additional information within 5 business days of OHA's request for information or the owner's request to submit information.

After the Initial Lease Term

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, OHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises OHA will consider unit size and length of tenancy in the other units. For additional details on how rents are determined, see Section **8-III.D.**

> OHA Policy
>
> The owner must issue a 60-Day notice to the tenant of the intent to increase the rent. A copy of such notice must accompany a rent increase request to OHA. The subject unit must be in compliance with HQS as determined by an inspection conducted and passed within twelve months of the proposed effective date of the increase. The owner may submit information about other comparable units in the market area when making a rent increase request. OHA will confirm the accuracy of the information provided. If the information submitted is accurate, OHA will consider this additional information along with its own comparability data when making rent determinations.
>
> OHA will determine whether the requested increase is reasonable within 15 business days of receiving a complete request from the owner. The owner will be notified of the determination in writing. All rent adjustments will be effective the first of the month following 60 days after OHA's receipt of the owner's complete request or on the date specified by the owner, whichever is later.

OHA- and HUD-Initiated Rent Reasonableness Determinations

HUD requires PHAs to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 5 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct OHA to make a determination at any other time. OHA may decide that a new determination of rent reasonableness is needed at any time.

> In addition to the instances described above, OHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) OHA determines that the initial rent reasonableness determination was in error or (2) OHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. OHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms

The type of unit including construction type (e.g., single family, duplex, triplex, fourplex, apartment, townhouse/condo)

- The quality of the units including the quality of the original construction, maintenance and improvements made
- Amenities, services, and utilities included in the rent.

Units that Must Not be Used as Comparables

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance.

Rents Charged for Other Units on the Premises

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting the PHA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give the PHA information regarding rents charged for other units on the premises.

8-III.D. PHA RENT REASONABLENESS METHODOLOGY

How Market Data is Collected

OHA Policy

OHA will primarily use the GoSection 8 database for rent reasonableness determinations. GoSection 8 is a national internet based rent reasonableness service that gathers, organizes and maintains a database of market-based comparable units. The service captures all of the HUD required key elements for rent reasonableness determinations. The Go Section 8 database will also be supplemented by comparables entered directly by OHA. OHA also collects its own data on market rents in Oakland. Information sources will include newspapers, internet rental listings, information from rental agencies, market surveys, comparables submitted by owners, data from the County Assessor's office and other available sources.

In the analysis of market rent data, primary consideration will be given to actual as opposed to advertised rents when available. The data will be maintained by proximity within the city, bedroom size, housing type and amount of rent. Information will also be collected about the number of bathrooms, utilities paid by the owner and tenant, appliances provided by the owner and tenant, the availability of laundry facilities and parking, amenities available and whether or not the property has accessibility features. Data will be updated on an ongoing basis and rent information that is more than 6 months old will be purged unless data for a particular neighborhood is scarce.

How Rents are Determined

OHA Policy

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. When considering approval of a requested rent, OHA will develop a range of prices for comparable units based on location, bedroom size and unit type. Comparison of the proposed rent within this range will be based on general unit condition, the number of bathrooms, the utilities that must be paid by the tenant, whether or not appliances are provided, the availability of laundry facilities and parking, amenities available and whether or not the property has accessibility features. More of these features will result in an approved rent that is at the higher end of the range for a given market area, fewer will result in an approved rent that is lower on the range. Consideration will also be given to exceptionally remodeled or brand new units (less than two-years old). These units may command a rent that is slightly above the range for older comparable units in a given market area.

When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of $500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows: $500 x 11 months = 5500/12 months = actual monthly rent of $488.

EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- **HUD Notice PIH 2010-10, HQS Inspections for the Housing Choice Voucher Program and Guidance Related to Electrical Outlets. Issued May 31, 2010**

Sanitary Facilities

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

Food Preparation and Refuse Disposal

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

Space and Security

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

Thermal Environment

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

Illumination and Electricity

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

Structure and Materials

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is

one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

Interior Air Quality

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one openable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

Water Supply

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

Lead-Based Paint

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the PHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by the PHA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

Access

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

Site and Neighborhood

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

Sanitary Condition

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

Smoke Detectors

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

Hazards and Heath/Safety

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities*. The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
- *Food Preparation and Refuse Disposal*. The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
- *Space and Security*. The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.
- *Energy conservation items*. The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
- *Illumination and Electricity*. The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.

(6) *Structure and Materials*. Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.

(7) *Indoor Air*. Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.

(8) *Sanitary Conditions*. The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.

(9) *Neighborhood conditions*. Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

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Chapter 9

GENERAL LEASING POLICIES

INTRODUCTION

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for a PHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the PHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by the PHA and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by the PHA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

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.

9-I.A. TENANT SCREENING

The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a)(1)].

The PHA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of OHA's policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, the PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. The PHA must also inform the owner or manager or their responsibility to comply with VAWA [24 CFR 5.2007(3)(ii)].

The PHA must provide the owner with the family's current and prior address (as shown in the PHA records); and the name and address (if known to the PHA) of the landlord at the family's current and prior address. [24 CFR 982.307 (b)(1)].

The PHA is permitted, but not required, to offer the owner other information in the PHA's possession about the family's tenancy [24 CFR 982.307(b)(2)].

The PHA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

<u>OHA Policy</u>

OHA will not screen applicants for family behavior or suitability for tenancy.

OHA will not provide additional screening information to the owner.

9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request OHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to OHA:

- Completed Request for Tenancy Approval (RTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for OHA to determine whether to approve the assisted tenancy in this unit.

Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

Owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless OHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

Both the RTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

OHA Policy

The RTA must be signed by both the family and the owner.

The owner may submit the RTA on behalf of the family.

Completed RTA (including the proposed dwelling lease) must be submitted as hard copies, in-person, by mail, or by fax.

The family may not submit, and OHA will not process, more than one (1) RTA at a time.

When the family submits the RTA OHA will review the RTA for completeness.

If the RTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RTA, OHA will notify the family and the owner of the deficiencies.

Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, or by fax. OHA will not accept missing information over the phone.

When the family submits the RTA and proposed lease, OHA will also review the terms of the RTA for consistency with the terms of the proposed lease.

If the terms of the RTA are not consistent with the terms of the proposed lease, OHA will notify the family and the owner of the discrepancies.

Corrections to the terms of the RTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail or by fax. OHA will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, OHA will attempt to communicate with the owner and family by phone, fax, or email. OHA will use mail when the parties can't be reached by phone, fax, or email.

9-I.C. OWNER PARTICIPATION

PHAs do not formally approve an owner to participate in the HCV program. However, there are a number of criteria where a PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

9-I.D. ELIGIBLE UNITS

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the PHA's jurisdiction. This includes the dwelling unit they are currently occupying.

Ineligible Units [24 CFR 982.352(a)]

The PHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

OHA Policy

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.***

PHA-Owned Units [24 CFR 982.352(b)]

Otherwise eligible units that are owned or substantially controlled by the PHA issuing the voucher may also be leased in the voucher program. In order for a PHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the PHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a PHA-owned unit without any pressure or steering by the PHA.

OHA Policy

OHA does own eligible units available for leasing under the voucher program. OHA will give proper notice to program participants.

Special Housing Types [24 CFR 982 Subpart M]

HUD regulations permit, but do not generally require, PHAs to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and

homeownership option. See Chapter 15 for specific information and policies on any of these housing types that OHA has chosen to allow.

The regulations do require a PHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

Duplicative Assistance [24 CFR 982.352(c)]

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD’s Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

Unit Size

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

Rent Burden [24 CFR 982.508]

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the dwelling unit rent must be at a level where the family's share of rent does not exceed 40 percent of the family's monthly adjusted income. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

9-I.E. LEASE AND TENANCY ADDENDUM

The family and the owner must execute and enter into a written dwelling lease for the assisted unit. This written lease is a contract between the tenant family and the owner; the PHA is not a party to this contract.

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 [24 CFR 982.308(a)]

Lease Form and Tenancy Addendum [24 CFR 982.308]

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

All provisions in the HUD-required Tenancy Addendum must also be added word-for-word to the owner's standard lease form, for use with the assisted family. The Tenancy Addendum includes the tenancy requirements for the program and the composition of the household as approved by OHA. As a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner and the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

> OHA Policy
>
> The owner must use a standard lease form use for rental to unassisted tenants. OHA will not provide a model or standard dwelling lease for owners to use in the HCV program.

Lease Information [24 CFR 982.308(d)]

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family

Term of Assisted Tenancy

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit PHAs to approve a shorter initial lease term if certain conditions are met.

> OHA Policy
>
> OHA will approve an initial lease term of less than one (1) year if agreed to by both the owner and participant family.

During the initial term of the lease, the owner may not raise the rent to owner [24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be in the dwelling lease if they exist.

A PHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 CFR 982.309(b)].

Security Deposit [24 CFR 982.313 (a) and (b)]

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if the PHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

> OHA Policy
>
> OHA will allow the owner to collect any security deposit amount the owner determines is appropriate, provided this amount is in accord with state and local law. Therefore, no modifications to the HAP contract will be necessary.

Separate Non-Lease Agreements between Owner and Tenant

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner minus the PHA's housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

OHA Policy

OHA permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease. A copy of any such agreement must be provided to OHA.

Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family. A copy of any such agreement must be provided to OHA.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property. A copy of any such agreement must be provided to OHA.

PHA Review of Lease

HUD requires PHAs to review the dwelling lease for compliance with all applicable HCV program requirements.

OHA Policy

If the dwelling lease is incomplete or incorrect, OHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by fax. OHA will not accept missing and corrected information over the phone

Because the initial leasing process is time-sensitive, OHA will attempt to communicate with the owner and family by phone, fax, or email. OHA will use mail when the parties can't be reached by phone, fax, or email.

PHAs are permitted, but not required, to review the lease to determine if the lease complies with State and local law and are permitted to decline to approve the tenancy if the PHA determines that the lease does not comply with State or local law [24 CFR 982.308(c)].

OHA Policy

OHA will not review the owner's lease for compliance with state/local law. However, if it is determined prior to approval of the HAP contract that the lease does not comply with state/local law, then OHA will not approve the tenancy.

9-I.F. TENANCY APPROVAL [24 CFR 982.305]

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, the PHA must promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, the PHA must ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by the PHA and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must is reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the PHA, with no conflicts of interest [24 CFR 982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305(b)].

OHA Policy

OHA will complete its determination within 15 business days of receiving all required information.

If the terms of the RTA/proposed lease are changed for any reason, including but not limited to negotiation with OHA, OHA will obtain corrected copies of the RTA and proposed lease, signed by the family and the owner.

Corrections to the RTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. OHA will not accept corrections over the phone.

If OHA determines that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. OHA will instruct the owner and family of the steps that are necessary to approve the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), OHA will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305]

The HAP contract is a written agreement between the PHA and the owner of the dwelling unit occupied by a housing choice voucher assisted family. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit and obliges the owner to comply with all program requirements.

The HAP contract format is prescribed by HUD.

If OHA has given approval for the family of the assisted tenancy, the owner and OHA execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

PHAs are permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

PHAs must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

PHAs may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the PHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60-day period is void, and the PHA may not pay any housing assistance payment to the owner.

OHA Policy

Workshops and orientations will be offered to all owners who have not previously participated in the HCV program. These sessions are **not** mandatory.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to OHA.

The owner and OHA will execute the HAP contract. OHA will not execute the HAP contract until the owner has submitted IRS form W-9. OHA will ensure that the owner receives a copy of the executed HAP contract.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, PHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, voucher assistance in the unit shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner. These circumstances include:

- Changes in lease provisions governing the term of the lease
- The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RTA) along with a new dwelling lease containing the altered terms. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of rent, the owner must notify the PHA of any changes in the amount of the rent to owner at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. OHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is <u>not</u> found to be reasonable, the owner must either reduce the requested rent increase, or give the family notice in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

<u>OHA Policy</u>

Where the owner is requesting a rent increase, OHA will determine whether the requested increase is reasonable within 15 business days of receiving a complete request from the owner. The owner will be notified of the determination in writing.

Rent increases will go into effect on the first of the month following the 60-days period after OHA's receipt of the owner's complete request of the rent change or the date specified by the owner, whichever is later.

Chapter 10

MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

INTRODUCTION

Freedom of choice is a hallmark of the housing choice voucher (HCV) program. In general, therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and OHA policies governing moves within or outside OHA's jurisdiction in two parts:

> Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under OHA's HCV program, whether the family moves to another unit within OHA's jurisdiction or to a unit outside OHA's jurisdiction under portability.
>
> Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into OHA's jurisdiction. This part also covers the special responsibilities that OHA has under portability regulations and procedures.

PART I. MOVING WITH CONTINUED ASSISTANCE

10-I.A. ALLOWABLE MOVES

HUD lists five regulatory conditions and the statutory condition under VAWA in which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the PHA a copy of the notice at the same time [24 CFR 982.314(d)(1)].
- The Violence Against Women Reauthorization Act of 2005 provides that "a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit" [24 CFR 982.353(b)].

- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.314(b)(1)(ii)].

  OHA Policy

  If the family and the owner mutually agree to terminate the lease for the family's unit, the family must use OHA's form and also must provide OHA a copy of the mutual termination agreement.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b)(2)]. The family must give the PHA a copy of any owner eviction notice [24 CFR 982.551(g)].
- The PHA has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.314(b)(1)(i)].
- The PHA determines that the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the PHA must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives notice to the owner. [24 CFR 982.403(a) and (c)]

10-I.B. RESTRICTIONS ON MOVES

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which a PHA may deny a family permission to move and two ways in which a PHA may restrict moves by a family.

Denial of Moves

HUD regulations permit a PHA to deny a family permission to move under the following conditions:

Insufficient Funding

A PHA may deny a family permission to move if the PHA does not have sufficient funding for continued assistance [24 CFR 982.314(e)(1)]. However, Notice PIH 2008-43 significantly restricts the ability of PHAs to deny permission to move under portability due to insufficient funding. The requirements found in this notice are mandatory. **For moves outside the PHA's jurisdiction under portability, no policy decisions are required.**

OHA Policy

OHA will deny a family permission to move on grounds that it does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or OHA; (b) OHA can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) OHA can demonstrate, in accordance with the policies in Part VIII of Chapter 16, that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs.

If OHA denies a family request to move due to insufficient funds, it will inform the family that the denial is temporary until funds become available and that the Housing Authority may not subsequently admit any additional families to the voucher program before it assist the family seeking to move. OHA will inform the family when it determines that there is sufficient funding to approve the move. If the family expresses interest, OHA will promptly process the request (PIH Notice 2008-43).

If OHA denies a family request to move due to insufficient funding, OHA must be able to document that granting the request would result in the termination of other families. Such documentation may include pending rent increases and the attrition rate for families leaving the voucher program. But the projected costs may not include the cost of vouchers issued to families who have not leased up.

A family assisted in a PBV program unit may request conversion to the Housing Choice Voucher program after completing an initial 12 month PBV lease term. Under MTW authority, the PBV program unit may be served by a site-based waiting list. A PBV conversion to HCV may be denied if due to insufficient funding, continued assistance under the HCV program is not immediately available upon termination of the family's lease in the PBV unit. If OHA denies a PBV program family request to move, it will inform the family that the denial is temporary until funds become available.

PBV conversions to the HCV program are additionally limited to a one for one selection of a new family from the HCV waiting list. A PBV program family that is denied a move will be given priority to receive the next available opportunity for continued tenant-based assistance in accordance with this policy. OHA will place the family on a separate PBV program transfer waiting list, based on the date and time of request. OHA will inform the family when it determines there is sufficient funding to approve the families request for continued assistance under the HCV program. If the family expresses interest, OHA will promptly process requests.

For OHA Policy regarding the Project- Based Voucher (PBV) program, see -Section 17-VIII.C. Family Right to Move.

Grounds for Denial or Termination of Assistance

The PHA has grounds for denying or terminating the family's assistance [24 CFR 982.314(e)(2)]. VAWA creates an exception to these restrictions for families who are otherwise in compliance with program obligations, but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence or stalking, and who reasonably believed he or she was imminently threatened by harm from further violence if they remained in the unit. [24 CFR 982.353(b)].

OHA Policy

If OHA has grounds for denying or terminating a family's assistance, OHA will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. In general, it will deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances. Refer to sections 3-III.G and 12-II.E for VAWA provisions.

Restrictions on Elective Moves [24 CFR 982.314(c)]

HUD regulations permit PHAs to prohibit any elective move by a participant family during the family's initial lease term. They also permit PHAs to prohibit more than one elective move by a participant family during any 12-month period.

OHA Policy

OHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within OHA's jurisdiction or outside it under portability.

OHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in OHA's jurisdiction. Exceptions will be considered on a case by case basis for families that submit a valid Mutual Agreement signed by the owner.

OHA will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, dating violence, stalking, witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control.

In addition, OHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

10-I.C. MOVING PROCESS

Notification

If a family wishes to move to a new unit, the family must notify the PHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.314(d)(2)]. If the family wishes to move to a unit outside the PHA's jurisdiction under portability, the notice to the PHA must specify the area where the family wishes to move [24 CFR 982.314(d)(2), Notice PIH 2008-43]. The notices must be in writing [24 CFR 982.5].

Approval

OHA Policy

Upon receipt of a family's notification that it wishes to move, OHA will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. If denied, OHA will notify the family in writing of its determination within 10 business days following receipt of the family's notification.

Reexamination of Family Income and Composition

OHA Policy

For families approved to move to a new unit within OHA's jurisdiction, OHA will conduct a review of income at the time of the request to move. Should the review of income or the family indicates a change in family composition at the time of the request to move, an interim reexamination will be conducted in accordance with the policies set forth in Chapter 11 of this plan.

OHA will perform a new annual reexamination only when the requested move is within three (3) months of the next annual recertification date.

For families moving into or families approved to move out of OHA's jurisdiction under portability, OHA will follow the policies set forth in Part II of this chapter.

Voucher Issuance and Briefing

OHA Policy

For families approved to move to a new unit within OHA's jurisdiction, OHA will issue a new voucher within 5 business days after all necessary documents have been submitted by the family. An interim reexamination is not necessary as a condition of issuance if the tenant self certifies and is verified by OHA, that no reportable changes have taken place since the last annual re-examination.

Should a participant provide any reportable changes in conjunction with the request to move which cannot be immediately verified, an interim reexamination of family income and household composition will be conducted. A new voucher will be issued within 15 business days of receipt of all required documents by the family assuming that all tenant provided information is independently verified. A briefing may be required for these families.

OHA will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and OHA approves. If a family does not locate a new unit within the term of the voucher and any extensions, and has vacated its current voucher assisted unit, the family will lose its assistance. The voucher family is entitled to an informal hearing before OHA may terminate continued voucher assistance for a participant family. For families moving into or families approved to move out of OHA's jurisdiction under portability, OHA will follow the policies set forth in Part II of this chapter.

Housing Assistance Payments [24 CFR 982.311(d)]

When a family moves out of an assisted unit, the PHA may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

PART II: PORTABILITY

10-II.A. OVERVIEW

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The first PHA is called the **initial PHA.** The second is called the **receiving PHA.**

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA bills the initial PHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance out of its own program funds, and the initial PHA has no further relationship with the family.

The same PHA commonly acts as the initial PHA for some families and as the receiving PHA for others. Each role involves different responsibilities. OHA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family.

10-II.B. INITIAL PHA ROLE

Allowable Moves under Portability

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA may choose the receiving PHA [24 CFR 982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside OHA's jurisdiction under portability. OHA, in accordance with HUD regulations and OHA policy, determines whether a family qualifies.

Applicant Families

Under HUD regulations, most applicant families qualify to lease a unit outside OHA's jurisdiction under portability. However, HUD gives PHAs discretion to deny a portability move by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance.

> OHA Policy
>
> In determining whether or not to deny an applicant family permission to move under portability because OHA lacks sufficient funding or has grounds for denying assistance to the family, OHA will follow the policies established in section 10-I.B of this chapter.

In addition, PHAs may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

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

> OHA Policy
>
> If neither the head of household nor the spouse/cohead of an applicant family had a domicile (legal residence) in OHA's jurisdiction at the time the family submitted their initial application for assistance, or at the time of the applicant interview, the family must live in OHA's jurisdiction with voucher assistance for at least 12 months before requesting portability.
>
> OHA will consider exceptions to this policy:
>
> - For purposes of reasonable accommodation (see Chapter 2).
> - For protecting victims of domestic violence, dating violence, and stalking.
> - Upon request by the Alameda County Children and Family Services department in Family Unification Program cases.
>
> Any exception to this policy is also subject to the approval of the receiving PHA [24 CFR 982.353(c)(3)].

Participant Families

The Initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease. [24 CFR 982.353(b)].

OHA Policy

OHA will determine whether a participant family may move out of OHA's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-I.B of this chapter. OHA will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

Determining Income Eligibility

Applicant Families

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(3)]. The family must specify the area to which the family wishes to move [Notice 2008-43].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c)(1)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2008-43].

Participant Families

The income eligibility of a participant family is not redetermined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2), 24 CFR 982.355(c)(1)].

Reexamination of Family Income and Composition

No new reexamination of family income and composition is required for an applicant family.

> OHA Policy
>
> For a participant family approved to move out of its jurisdiction under portability, OHA generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.
>
> OHA will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

Briefing

The regulations and policies on briefings set forth in Chapter 5 of this plan require OHA to provide information on portability to all applicant families that qualify to lease a unit outside the OHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

> OHA Policy
>
> OHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5). OHA will provide the name, address, and phone of the contact for the PHA in the jurisdiction to which they wish to move. OHA will advise the family that they will be under the Receiving Housing Authority's (RHA) policies and procedures, including subsidy standards and voucher extension policies.

Voucher Issuance and Term

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, OHA will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

OHA Policy

For families approved to move under portability, OHA will issue a new voucher within 15 business days of receipt of all necessary documents by the family. The initial term of the voucher will be 90 days.

Voucher Extensions and Expiration

OHA Policy

OHA will approve **no** extensions to a voucher issued to an applicant or participant family porting out of OHA's jurisdiction unless the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under OHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 60 days following the expiration date of OHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

Initial Contact with the Receiving PHA

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA to expect the family [24 CFR 982.355(c)(2)]. This means that the initial PHA must contact the receiving PHA directly on the family's behalf [Notice PIH 2008-43]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(2)].

OHA Policy

Because the portability process is time-sensitive, OHA will notify the receiving PHA by phone, fax, or e-mail to expect the family. The OHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, email and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. OHA will pass this information along to the family. OHA will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

Sending Documentation to the Receiving PHA

The initial PHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2008-43]
- A copy of the family's voucher [Notice PIH 2008-43]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2008-43]
- Copies of the income verifications backing up the form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2008-43]

OHA Policy

In addition to these documents, OHA will provide the following information, if available, to the receiving PHA:

Social security numbers (SSNs)
Documentation of SSNs for all family members age 6 and over
Documentation of legal identity
Documentation of citizenship or eligible immigration status
Documentation of participation in the earned income disallowance (EID) benefit
Documentation of participation in a family self-sufficiency (FSS) program
A copy of the family's current EIV data

Initial Billing Deadline [Notice PIH 2008-43]

When the initial PHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 60 days following the expiration date of the voucher issued to the family by the initial PHA. If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must contact the receiving PHA to determine the status of the family. If the receiving PHA reports that the family is not yet under HAP contract, the initial PHA may refuse to accept a late billing submission. If the receiving PHA reports that the family is under HAP contract and the receiving PHA cannot absorb the family, the initial PHA must accept a late billing submission; however, it may report to HUD the receiving PHA's failure to comply with the deadline.

OHA Policy

If OHA has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail on the next business day. If the receiving PHA reports that the family is not yet under HAP contract, OHA will inform the receiving PHA that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. OHA will send the receiving PHA a written confirmation of its decision by mail.

OHA will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2008-43]

If the receiving PHA is administering the family's voucher, the initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of overleasing or funding shortfalls. The PHA must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

Annual Updates of Form HUD-50058

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family.

Denial or Termination of Assistance [24 CFR 982.355(c)(9)]

If the initial PHA has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, the initial PHA may act on those grounds at any time. (For OHA policies on denial and termination, see Chapters 3 and 12, respectively.)

10-II.C. RECEIVING PHA ROLE

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)].

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e)(2)].

Initial Contact with Family

When a family moves into the PHA's jurisdiction under portability, the family is responsible for promptly contacting the PHA and complying with the PHA's procedures for incoming portable families [24 CFR 982.355(c)(3)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA does not process the family's paperwork but instead refers the family back to the initial PHA [Notice PIH 2008-43].

When a portable family requests assistance from the receiving PHA, the receiving PHA must promptly inform the initial PHA whether the receiving PHA will bill the initial PHA for assistance on behalf of the portable family or will absorb the family into its own program [24 CFR 982.355(c)(5)]. If the PHA initially bills the initial PHA for the family's assistance, it may later decide to absorb the family into its own program [Notice PIH 2008-43]. (See later under "Absorbing a Portable Family" for more on this topic.)

> <u>OHA Policy</u>
>
> Within 10 business days after a portable family requests assistance, OHA will notify the initial PHA whether it intends to bill the initial PHA on behalf of the portable family or absorb the family into its own program.

If for any reason the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2008-43]. (For more on this topic, see later under "Denial or Termination of Assistance.")

Briefing

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2008-43].

OHA Policy

OHA will require the family to attend a briefing. OHA will provide the family with a briefing packet (as described in Chapter 5) and, will orally inform the family about OHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

Income Eligibility and Reexamination

HUD allows the receiving PHA to conduct its own income reexamination of a portable family [24 CFR 982.355(c)(4)]. However, the receiving PHA may not delay voucher issuance or unit approval until the reexamination process is complete unless the reexamination is necessary to determine that an applicant family is income eligible for admission to the program in the area where the family wishes to lease a unit [Notice PIH 2008-43, 24 CFR 982.201(b)(4)]. The receiving PHA does not redetermine income eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(1)].

OHA Policy

For any family moving into its jurisdiction under portability, OHA will not conduct a new reexamination of family income and composition unless the family is an applicant and OHA cannot otherwise confirm that the family is income eligible for admission to the program.

In conducting its own reexamination, OHA will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

Voucher Issuance

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(b)(6)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR 982.355(c)(6)].

Timing of Voucher Issuance

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2008-43].

OHA Policy

When a family ports into its jurisdiction, OHA will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with OHA's procedures. OHA will update the family's information when verification has been completed.

Voucher Term

The term of the receiving PHA's voucher may not expire before the term of the initial PHA's voucher [24 CFR 982.355(c)(6)].

OHA Policy

For vouchers issued to incoming portables, OHA's term will expire on the same date as the initial PHA's voucher.

Voucher Extensions [24 CFR 982.355(c)(6), Notice 2008-43]

The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

OHA Policy

OHA generally will not extend the term of the voucher that it issues to an incoming portable family unless OHA plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E. Incoming portable families wishing to extend their voucher term will be referred to their initial PHA.

OHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

Notifying the Initial PHA

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA's voucher [24 CFR 982.355(c)(8)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 CFR 982.355(e)(5), Notice PIH 2008-43]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher").

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction. [Notice PIH 2008-43]

Administering a Portable Family's Voucher

Initial Billing Deadline

If a portable family's search for a unit is successful and the receiving PHA intends to administer the family's voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 10 business days following the date the receiving PHA **executes** a HAP contract on behalf of the family **and** (b) in time that the notice will be **received** no later than 60 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2008-43]. A copy of the family's form HUD-50058, Family Report, completed by the receiving PHA must be attached to the initial billing notice. The receiving PHA may send these documents by mail, fax, or e-mail.

> <u>OHA Policy</u>
>
> OHA will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline, but will also send the notice by regular mail.

If the receiving PHA fails to send the initial billing within 10 business days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is overleased) [Notice PIH 2008-43].

Ongoing Notification Responsibilities [Notice PIH 2008-43, HUD-52665 as amended by MTW]

Annual Reexamination. Normally, the receiving PHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

Change in Billing Amount. The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification.

Late Payments [Notice PIH 2008-43]

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The receiving PHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification, the receiving PHA may request by memorandum to the director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. The receiving PHA must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

Overpayments [Notice PIH 2008-43]

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2008-43.

Denial or Termination of Assistance

At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(9), 24 CFR 982.355(c)(10)].

In the case of a termination, the PHA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the receiving PHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement. [Notice PIH 2008-43]

OHA Policy

If OHA elects to deny or terminate assistance for a portable family, OHA will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. OHA will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The OHA will furnish the initial PHA with a copy of the review or hearing decision.

Absorbing a Portable Family

The receiving PHA may absorb an incoming portable family into its own program when the PHA executes a HAP contract on behalf of the family or at any time thereafter providing that (a) the PHA has funding available under its annual contributions contract (ACC) and (b) absorbing the family will not result in overleasing [24 CFR 982.355(d)(1), Notice PIH 2008-43].

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR 982.201(b)(2)(vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family. [Notice PIH 2008-43]

> OHA Policy
>
> If OHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, OHA will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption.
>
> If OHA decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA's voucher program [24 CFR 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability.

Chapter 11

REEXAMINATIONS

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.

INTRODUCTION

PHAs are required to reexamine each family's income and composition at least annually, and to adjust the family's level of assistance accordingly. As a participant in the MTW program, OHA has altered this requirement for elderly and disabled families on fixed incomes. These families will have their income reexamined every three years as opposed to every year. Interim reexaminations are also needed in certain situations. This chapter discusses both annual and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and OHA policies concerning reexaminations are presented in three parts:

> Part I: Annual and Triennial Reexaminations. This part discusses the process for conducting triennial reexaminations for elderly and disabled families on fixed incomes and annual reexaminations for all other families.
>
> Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.
>
> Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516 as amended by MTW]

11-I.A. OVERVIEW

OHA must conduct a reexamination of family income and composition at least once every three years (triennial) for elderly and disabled families on fixed incomes and annually for all other families. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

11-I.B. SCHEDULING ANNUAL REEXAMINATIONS

PHAs must establish a policy to ensure that the reexamination for each family is completed *within* either a 12-month period or a 36-month period for those elderly and disabled families on fixed incomes that qualify for triennial recertification.

OHA Policy

OHA will begin the triennial reexamination process 120 days in advance of its scheduled effective date. Generally, OHA will schedule triennial reexamination effective dates to coincide with the family's anniversary date.

Anniversary date is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission) or, initial contract (lease-up) or, for elderly and disabled families on fixed incomes, as 36 months from the effective date of the family's last triennial reexamination.

OHA also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

Notification of and Participation in the Triennial Reexamination Process

PHAs are required to obtain the information needed to conduct reexaminations. How that information will be collected is left to the discretion of each individual PHA. PHAs may give tenants who were not provided the opportunity the option to complete Form HUD-90026 at this time [Notice PIH 2009-36].

OHA Policy

Families generally are required to participate in an annual or triennial reexamination interview, which must be attended by the head of household, spouse, or cohead. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact OHA to request a reasonable accommodation (see Chapter 2).

Notification of annual or triennial reexamination interviews will be sent by first-class mail and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

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. If a family does not attend the scheduled interview, OHA will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without OHA approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 12) will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and OHA must execute a certification attesting to the role and assistance of any such third party.

11-I.C. CONDUCTING REEXAMINATIONS

As part of the annual or triennial reexamination process, families are required to provide updated information to the PHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

OHA Policy

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include an OHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, OHA's authorization form(s) that enables OHA to verify information required by HUD, but not covered under HUD's release form, as well as supporting documentation related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

As part of its ongoing quality control audit process, OHA may request these forms if a audit determines that the file copies are missing or incomplete. If adding a new family member to the unit causes overcrowding according to the Housing Quality Standards (HQS) (see Chapter 8), OHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, OHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

11-I.D. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b)(5)]

Section 327 of Public Law 109-115 established new restrictions on the ongoing eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled in 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 student's eligibility must be reexamined along with the income eligibility of the student's parents on an annual basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV assistance. If, however, a student in these circumstances is determined independent from his or her parents in accordance with PHA policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility.

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

OHA Policy

During the reexamination process, OHA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), the PHA will process a reexamination in accordance with the policies in this chapter.

11-I.E. EFFECTIVE DATES

PHAs must establish policies concerning the effective date of changes that result from a reexamination [24 CFR 982.516].

OHA Policy

In general, an *increase* in the family share of the rent that results from an annual or triennial reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.

If OHA chooses to schedule a reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by OHA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the family share of the rent that results from an annual or triennial reexamination will take effect on the family's anniversary date.

If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.

If OHA chooses to schedule a reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by OHA.

If the family causes a delay in processing the reexamination, d*ecreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by OHA by the date specified, and this delay prevents OHA from completing the reexamination as scheduled.

PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]

11-II.A. OVERVIEW

Family circumstances may change throughout the period between annual/triennial reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the PHA must process interim reexaminations to reflect those changes. HUD regulations also permit the PHA to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. The PHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and OHA policies describing what changes families are required to report, what changes families may choose to report, and how OHA will process both OHA- and family-initiated interim reexaminations.

11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

PHAs must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to family obligations under the program, PHAs have limited discretion in this area.

OHA Policy

OHA will conduct interim reexaminations to account for any changes in household composition that occur between annual or triennial reexaminations.

New Family Members Not Requiring Approval

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require PHA approval. However, the family is required to promptly notify the PHA of the addition [24 CFR 982.551(h)(2)].

OHA Policy

The family must inform OHA of the birth, adoption or court-awarded custody of a child within 10 business days.

New Family and Household Members Requiring Approval

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

When any new family member is added, the PHA must conduct a reexamination to determine any new income or deductions associated with the additional family member, and to make appropriate adjustments in the family share of the rent and the HAP payment [24 CFR 982.516(e)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

OHA Policy

Families must request OHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 30 consecutive days, or 90 cumulative days, within a twelve-month period, and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by OHA prior to the individual moving in the unit.

Family additions are at OHA's discretion. In cases where the addition of a family member(s) would increase the existing subsidy size, the added family member(s) can only be a minor, a person with a disability or elderly adult with no other means of obtaining affordable and safe housing. The family does not have a right for an informal hearing if OHA does not approve the addition of a family member.

In the case of a child related to the head of household or spouse by informal (not court-awarded) custody. Such informal custody arrangements must be documented by a notarized letter from the parent permitting custody of the minor to the head of household/co-head or spouse. If a letter from the parent is not obtainable, the custody arrangement must have written approval by a social service or child welfare professional as being in the best interest of the child.

OHA will not approve the addition of a new family or household member unless the individual meets OHA's eligibility criteria (see Chapter 3).

OHA will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

If OHA determines an individual meets the OHA's eligibility criteria as defined in Chapter 3, OHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued another voucher and will be required to move.

If OHA determines that an individual does not meet the OHA's eligibility criteria as defined in Chapter 3, OHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

OHA will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

Departure of a Family or Household Member

Families must promptly notify OHA if any family member no longer lives in the unit

[24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], OHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

OHA Policy

If a household member ceases to reside in the unit, the family must inform OHA within 10 business days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform OHA within 10 business days.

11-II.C. CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations can be scheduled either because OHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, OHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

PHA-Initiated Interim Reexaminations

PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the PHA. They are not scheduled because of changes reported by the family.

OHA Policy

OHA will conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), OHA will conduct an interim reexamination at the start and conclusion of the second 12 month exclusion period (50 percent phase-in period).
If the family has reported zero income, OHA will conduct an interim reexamination every 3 months as long as the family continues to report that they have no income.

If at the time of the reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), OHA will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.

If at the time of the annual or triennial reexamination, tenant-provided documents were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, OHA will conduct an interim reexamination.

OHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

Family-Initiated Interim Reexaminations

PHAs must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 982.516(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)].

Required Reporting

OHA Policy

Except for families that qualify for the earned income disallowance (EID), families are **not** required to report increases in earned income. Families that qualify for EID must report all increases in earned income, including new employment within 10 business days of the date the change takes effect.

OHA will only conduct interim reexaminations for families that qualify for the earned income disallowance (EID), and only when the EID family's share of rent will change as a result of the increase. In all other cases, OHA will note the information in the tenant file, but will not conduct an interim reexamination.

Families are not required to report any other changes in income or expenses.

Optional Reporting

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)]. The PHA must process the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

OHA Policy

If a family reports a change that it was not required to report and that would result in an increase in the family share of the rent, OHA will note the information in the tenant file, but will not conduct an interim reexamination.
A family enrolled in the FSS program may report increases in family income to increase their escrow account balances. OHA will conduct an interim reexamination at the participant's request.

If a family reports a change that it was not required to report and that would result in a decrease in the family share of rent, OHA will conduct an interim reexamination. See Section 11-II.D. for effective dates.

Families may report changes in income or expenses at any time.

11-II.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

OHA Policy

The family may notify OHA of changes either orally or in writing. If the family provides oral notice, OHA may also require the family to submit the changes in writing.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if OHA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, OHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 business days of receiving a request from OHA. This time frame may be extended for good cause with OHA approval. OHA will accept required documentation by mail, by fax, or in person.

Effective Dates

PHAs must establish the time frames in which any changes that result from an interim reexamination will take effect [24 CFR 982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent, and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].

OHA Policy

If the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

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

If the family share of the rent is to *decrease*:

The decrease will be effective on the first day of the month following the month in which the change was reported and all required documentation was submitted. In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

11-III.A. OVERVIEW

After gathering and verifying required information for an annual, triennial or interim reexamination, the PHA must recalculate the family share of the rent and the subsidy amount, and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the PHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

Payment Standards [24 CFR 982.505 as amended by MTW]

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When OHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If OHA's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
  - If the payment standard amount has i*ncreased*, the increased payment standard will be applied at the *first annual* reexamination following the effective date of the increase in the payment standard.
  - If the payment standard amount has *decreased*, the decreased payment standard will be applied at the *first annual* reexamination following the effective date of the decrease in the payment standard, provided that at least 90 days notice can be provided to the family. If 90 days notice cannot be provided, then the increase will be applied at the *second annual* reexamination following the effective date of the decrease in the payment standard.
- Reasonable Accommodation
  - If the payment standard amount has i*ncreased* as a result of a reasonable accommodation, the increased payment standard will be applied at the effective date of the reasonable accommodation.

- 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.

If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

Subsidy Standards [24 CFR 982.505(c)(4)]

If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the PHA's subsidy standards (see Chapter 5 for Housing Choice Voucher program Subsidy Standards. See Chapter 17 Subsidy Standards applicable to the Project Based Voucher program), the new family unit size must be used to determine the payment standard amount for the family at the family's *first annual* reexamination following the change in family unit size.

Utility Allowances [24 CFR 982.517(d)]

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in the PHA's utility allowance schedule [HCV GB, p. 12-5]. Chapter 16 discusses how utility allowance schedules are established.

When there are changes in the utility arrangement with the owner, the PHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, PHAs must use their current utility allowance schedule [24 CFR 982.517(d)(2)].

<u>OHA Policy</u>

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

COLAs (MTW)

While OHA will not conduct an annual reexamination for elderly and disabled families on fixed incomes, OHA will use any COLAs (either positive or negative) that affect the income of families in these groups to recalculate family share and subsidy. This adjustment will be conducted annually based on the date of scheduled change to the subsidy provided families on fixed incomes.

11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT

The PHA must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

The amount and effective date of the new HAP payment

The amount and effective date of the new family share of the rent

The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding the PHA's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

> OHA Policy
>
> The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment. The notice also will state the procedures for requesting an informal hearing.

11-III.D. DISCREPANCIES

During an annual triennial or interim reexamination, OHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, OHA may discover errors made by OHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 14.

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Chapter 12

TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify the reasons for which a PHA can terminate a family's assistance, and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter presents the policies that govern voluntary and involuntary terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part discusses various reasons that a family's assistance may be terminated, including voluntary termination by the family, termination because the family no longer qualifies to receive subsidy, and termination by OHA based on the family's behavior.

Part II: Approach to Termination of Assistance. This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that the OHA may consider in lieu of termination, the criteria OHA must use when deciding what action to take, and the steps OHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part presents the policies that govern the owner's right to terminate an assisted tenancy.

PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

12-I.A. OVERVIEW

HUD requires PHAs to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits PHAs to terminate assistance for certain other actions family members take or fail to take. In addition, a family may decide to stop receiving HCV assistance at any time by notifying their PHA.

12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

As a family's income increases, the amount of PHA subsidy goes down. If the amount of HCV assistance provided by the PHA drops to zero and remains at zero for 180 consecutive calendar days the family's assistance terminates automatically.

OHA Policy

Under MTW authority, if a participating family receiving zero assistance experiences a change in circumstances that would cause the HAP payment to rise above zero, the family must notify OHA of the changed circumstances and request an interim reexamination before the expiration of a 24 month period.

12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE

The family may request that the PHA terminate the family's assistance at any time.

OHA Policy

The request to terminate assistance should be made in writing and signed by the head of household, spouse, or cohead. Before terminating the family's assistance, OHA will follow the notice requirements in Section 12-II.E.

12-I.D. MANDATORY TERMINATION OF ASSISTANCE

HUD requires PHAs to terminate assistance in the following circumstances.

Eviction [24 CFR 982.552(b)(2)]

PHAs must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. Incidents of actual or threatened violence, dating violence, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

OHA Policy

A family may be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary. This will be determined on a case-by-case basis.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. However, OHA will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in Section 12-II.C and other factors as described in Sections 12-II.D and Sections 12-II.E. Upon consideration of such alternatives and factors, the OHA may, on a case-by-case basis, choose not to terminate assistance.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criteria to be used is whether the reason for the eviction was through no fault of the tenant or guests.

Failure to Provide Consent [24 CFR 982.552(b)(3)]

PHAs must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a reexamination. See Chapter 7 for a complete discussion of consent requirements.

Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]

PHAs must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by the PHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

Failure to Provide Social Security Documentation [24 CFR 5.218(c)]

PHAs must terminate assistance if a participant family fails to provide the documentation or certification required for any family member who obtains a social security number, joins the family, or reaches 6 years of age.

Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]

PHAs must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR 982.552(b)(5) and FR 4/10/06]

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, and is not residing with his/her parents in an HCV assisted household, the PHA must the terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and PHA policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS

Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]

HUD requires PHAs to establish policies that permit the PHA to terminate assistance if the PHA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity

Use of Illegal Drugs and Alcohol Abuse

OHA Policy

OHA will terminate a family's assistance if any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

OHA will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

Currently engaged in is defined as any use of illegal drugs during the previous six months.

OHA will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.

In making its decision to terminate assistance, OHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate assistance.

Drug-Related and Violent Criminal Activity [24 CFR 5.100]

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Drug-related criminal activity is defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

OHA Policy

OHA will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

OHA will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

In making its decision to terminate assistance, OHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate assistance.

Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c)]

HUD permits the PHA to terminate assistance under a number of other circumstances. It is left to the discretion of the PHA whether such circumstances in general warrant consideration for the termination of assistance. The Violence Against Women Reauthorization Act of 2005 explicitly prohibits PHAs from considering incidents of actual or threatened domestic violence, dating violence, or stalking as reasons for terminating the assistance of a victim of such violence.

OHA Policy

OHA **will not** terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency or Welfare to Work voucher programs.

OHA **may** terminate a family's assistance if:

The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related OHA policies.

Any family member has been evicted from federally-assisted housing in the last five years.

Any PHA has ever terminated assistance under the program for any member of the family.

Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

The family currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs.

The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

The family has breached the terms of a repayment agreement entered into with the PHA.

A family member has engaged in or threatened violent or abusive behavior toward OHA personnel.

Abusive or violent behavior towards OHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate assistance, OHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, OHA may, on a case-by-case basis, choose not to terminate assistance.

Family Absence from the Unit [24 CFR 982.312]

The family may be absent from the unit for brief periods. Each PHA must establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days with the exceptions as noted in 3-I.L. Absence in this context means that no member of the family is residing in the unit.

OHA Policy

If the family is absent from the unit for more than 60 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.E.

Insufficient Funding [24 CFR 982.454]

A PHA may terminate HAP contracts if the PHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

OHA Policy

OHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If OHA determines there is a shortage of funding, prior to terminating any HAP contracts, OHA will determine if any other actions can be taken to reduce program costs. If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the PHA will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, OHA will inform the local HUD field office. OHA will terminate the minimum number needed in order to reduce HAP costs to a level within the PHA's annual budget authority.

If OHA must terminate HAP contracts due to insufficient funding, OHA will do so in accordance with the following criteria and instructions:

OHA will first terminate tenant-based assistance to families that are receiving less than $100 in monthly Housing Assistance Payments. OHA will next terminate tenant-based assistance to families that are receiving less than $200 in monthly Housing Assistance Payments. OHA will finally terminate tenant-based assistance to families that have been on the Section 8 program the longest, with the exception that contracts for elderly and disabled families will not be cancelled unless there are no non-elderly families on OHA's tenant-based HCV program. Families living in project-based voucher developments under long term HAP contracts commitments will be terminated as a very last resort.

PART II: APPROACH TO TERMINATION OF ASSISTANCE

12-II.A. OVERVIEW

PHAs are required by regulation to terminate a family's assistance if certain program rules are violated. For other types of offenses, the regulations give PHAs the discretion to either terminate the family's assistance or to take another action. This part discusses the various actions OHA may choose to take when it has discretion, and outlines the criteria OHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notice that must be provided before terminating assistance.

12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]

The way in which a PHA terminates assistance depends upon individual circumstances. HUD permits PHA to terminate assistance by:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to approve a request for tenancy or to enter into a new HAP contract, or
- Refusing to process a request for or to provide assistance under portability procedures.

12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE

Change in Household Composition

As a condition of continued assistance, a PHA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c)(2)(ii)].

OHA Policy

As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon OHA request.

Repayment of Family Debts

OHA Policy

If a family owes amounts to OHA, as a condition of continued assistance, OHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from OHA of the amount owed. See Chapter 16 for policies on repayment agreements.

Neighborhood Orientation Workshop (MTW)

The Neighborhood Orientation Workshop is an MTW initiative which is intended to provide Section 8 Program participants with information and access to training if needed to become successful tenants and responsible, engaged 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.

OHA Policy

As a condition of continued assistance, a participant family may be required to attend a Neighborhood Orientation Workshop. This requirement may be imposed as a part of an OHA Warning Meeting (Section 16-III.C. – Warning Meetings), convened in response to a complaint of alleged behavior related to violations of participant family obligations or lease agreement. The Head of Household and any other responsible adult family members in the household may be required to attend a Neighborhood Orientation Workshop as a condition of continued assistance. Upon completion, attendees will be required to submit a copy of their certificate of completion to OHA.

12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

Evidence

For criminal activity, HUD permits PHAs to terminate assistance if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

OHA Policy

OHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

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

Consideration of Circumstances [24 CFR 982.552(c)(2)(i)]

PHAs are permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

OHA Policy

OHA will consider the following factors when making its decision to terminate assistance:

The seriousness of the case, especially with respect to how it would affect other residents

The effects that termination of assistance may have on other members of the family who were not involved in the action or failure

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E) a victim of domestic violence, dating violence, or stalking."

The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future

In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully

OHA will require the participant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family.

Reasonable Accommodation [24 CFR 982.552(c)(2)(iv)]

If the family includes a person with disabilities, a PHA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

OHA Policy

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of assistance, OHA will determine whether the behavior is related to the disability. If so, upon the family's request, OHA will determine whether alternative measures are appropriate as a reasonable accommodation. OHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed termination of assistance. See Chapter 2 for a discussion of reasonable accommodation.

12-II.E. TERMINATING THE ASSISTANCE OF DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING VICTIMS AND PERPETRATORS [24 CFR 5.2005]

The Violence Against Women Reauthorization Act of 2005 (VAWA) provides that "criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be a cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking."

VAWA also gives PHAs the authority to "terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant."

Prior to terminating assistance based on any of the "Other Authorized Reasons for Termination of Assistance" (Section **12-I.E., page 12-5)** the PHA shall consider, whether domestic violence, dating violence, or stalking played a role in causing the basis for termination.

Furthermore, an individual who is or has been a victim of domestic violence, dating violence, or stalking should not be held to a more demanding standard than other tenants in determining whether to terminate assistance.

Nothing in this Plan may be construed to limit the authority of the PHA to honor court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.

Victim Documentation

OHA Policy

All termination notices will notify participants of VAWA's protections, and that they may seek an informal hearing if they believe that the termination is based on acts of domestic violence, dating violence, or stalking committed against them. In accordance with OHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

When a participant is facing assistance termination and asserts that the termination is directly related to acts of domestic violence, dating violence or stalking committed against the participant or an immediate family member of the participant, OHA may request that a participant submit documentation affirming that claim. OHA's request for such documentation shall be in writing.

An individual may satisfy the documentation request in any of the following ways:

- Completing a HUD-approved certification form (such as Form HUD-50066) or signed statement verifying that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of actual or threatened abuse. OHA will work with the victim to ensure that delivery of the certification form does not endanger the victim's safety. OR

- Providing the requesting owner, manager, or OHA with documentation signed by any of the following third parties: (a) an employee, agent, or volunteer of a victim service provider; (b) an attorney; (c) a medical professional; or (d) other knowledgeable professional. The person signing the documentation must have assisted the victim in addressing domestic violence, dating violence, or stalking, or the effects of the abuse. The person signing the documentation must attest under penalty of perjury to his or her belief that the incident or incidents in question are bona fide incidents of abuse. The victim of domestic violence, dating violence, or stalking must also sign the documentation. OR

- Producing a Federal, State, tribal, territorial, or local police or court record.

The requested certification and supporting documentation must be submitted to OHA within 14 business days (i.e., Saturdays, Sundays, and holidays do not count) after the PHA issues their written request. The 14-business-day deadline may be extended at the PHA's discretion. If the individual does not provide the required certification and supporting documentation within 14 business days, or the approved extension period, the PHA may proceed with assistance termination or, with respect to any specific case, waive the above-stated provisions.

Nothing in this subsection shall be construed to require the owner, manager or public housing agency to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, or stalking in order to receive any of the benefits provided in this section. At their discretion, the owner, manager or public housing agency may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.

Actual and Imminent Threat

Nothing in this Plan limits the authority of the PHA to terminate the assistance of any occupant who can be demonstrated to pose an actual or imminent threat to other tenants or the property's employees.

Terminating the Assistance of a Domestic Violence Perpetrator [24 CFR 5.2005(c)]

Although VAWA provides assistance termination protection for victims of domestic violence, it does not provide protection for perpetrators. VAWA gives the PHA the explicit authority to "terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant." This authority supersedes any local, state, or other federal law to the contrary. However, if the PHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance [Pub.L. 109-271].

<u>OHA Policy</u>

When the actions of a participant or other family member result in an OHA decision to terminate the family's assistance and another family member claims that the actions involve criminal acts of physical violence against family members or others, OHA may request that the victim submit the above specified documentation in accordance with the stated time frame. If the documentation is submitted within the required time frame, or any approved extension period, OHA will terminate the perpetrator's assistance. If the victim does not provide the requested documentation and OHA does not waive that request, OHA may proceed with termination of the family's assistance.

When rent for a Section 8 unit has previously been determined based on the income of an abusive family member who has left the household or been excluded from the household by a domestic violence restraining order or injunction or other court order, rent for the unit will be adjusted to reflect the household's changed circumstances.

PHA Confidentiality Requirements [24 CFR 5.2005(a)(1)(v)]

All information provided to the PHA regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared data base nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law. If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the PHA will inform the victim before disclosure occurs so that safety risks can be identified. If disclosure of the information would place the victim's safety at risk, the PHA will work with the victim to determine whether there are alternatives to disclosure.

12-II.F. TERMINATION NOTICE [HCV GB, p. 15-7]

If a family's assistance is to be terminated, whether voluntarily or involuntarily, OHA must give the family and the owner written notice that specifies:

- The reasons for which assistance has been terminated
- The effective date of the termination
- The protections against termination available to victims of domestic violence, dating violence, or stalking and their families
- The family's right to an informal hearing as described in Chapter 16

OHA Policy

The OHA termination notice will include a reminder of the family's right to bring counsel and to referral information for local legal services organizations

If a criminal record is the basis of the termination, a copy of the record must accompany the notice. A copy of the criminal record also must be provided to the subject of the record [24 CFR 982.553(d)].

OHA Policy

When termination is initiated by OHA, the notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination. However, if a family vacates the unit without informing OHA, 30 days notice will not be given. In these cases, the notice to terminate will be sent at the time OHA learns the family has vacated the unit.

When a family requests to be terminated from the program they must do so in writing to OHA (see section 12-I.C.). OHA will then send a confirmation notice to the family and the owner within 10 business days of the family's request, but no later than the termination effective date (as requested by the family).

Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]

PHAs must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or eligible immigration status; (2) evidence of citizenship and eligible immigration status is submitted timely, but USCIS primary and secondary verification does not verify eligible immigration status of a family; or (3) the PHA determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3) above, such termination must be for a period of at least 24 months.

The notice of termination must advise the family of the reasons their assistance is being terminated, that they may be eligible for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, that they have the right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and that they have the right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Informal hearing procedures are contained in Chapter 16.

OHA Policy

The notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination.

12-II.G. HOW TERMINATION OF ASSISTANCE AFFECTS THE HAP CONTRACT AND LEASE

When the family's assistance is terminated, the lease and HAP contract terminate automatically [Form HUD-52641].

The owner may offer the family a separate unassisted lease [HCV GB, p. 15-8].

PART III: TERMINATION OF TENANCY BY THE OWNER

12-III.A. OVERVIEW

Termination of an assisted tenancy is a matter between the owner and the family; OHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy, and the reasons for which a tenancy is terminated dictate whether assistance also will be terminated.

12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310 and Form HUD-52641-A, Tenancy Addendum]

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

Serious or Repeated Lease Violations

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease. This includes failure to pay rent or other amounts due under the lease. However, OHA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

Violation of Federal, State, or Local Law

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

Criminal Activity or Alcohol Abuse

The owner may terminate tenancy during the term of the lease, except as provided by 12-II.E, if any *covered person*, meaning any member of the household, a guest or another person under the tenant's control commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
- Any violent criminal activity on or near the premises; or
- Any drug-related criminal activity on or near the premises.

The owner may terminate tenancy during the term of the lease, except as provided by 12-II.E, if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy for criminal activity by a household member in accordance with this section, except as provided by 12-II.E, if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

The owner may terminate tenancy during the term of the lease, except as provided by 12-II.E, if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

Evidence of Criminal Activity

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines they have engaged in the criminal activity, regardless of arrest or conviction and without satisfying the standard of proof used for a criminal conviction, except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, or stalking and the tenant or an immediate member of the tenant's family is the victim or threatened victim of the domestic violence, dating violence, or stalking. (See Section 12-II.E.).

Other Good Cause

During the initial lease term, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, "other good cause" for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision;
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent).

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

Protecting Tenants at Foreclosure [Notice PIH 2009-52]

In the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner,

(i) will occupy the unit as a primary residence; and

(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.

12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give the PHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the PHA a copy of any eviction notice (see Chapter 5).

OHA Policy

If the eviction action is finalized in court, the owner must provide OHA with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 10 business days following the court-ordered eviction.

12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h), 24 CFR 982.310(h)(4)]

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The nature of the offending action;
- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

12-III.E. EFFECT OF TERMINATION OF TENANCY ON THE FAMILY'S ASSISTANCE

If a termination is not due to a serious or repeated violation of the lease, and if OHA has no other grounds for termination of assistance, OHA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS

Following is a listing of a participant family's obligations under the HCV program:

- The family must supply any information that OHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by OHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.
- The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

  OHA Policy

  OHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction, or an owner's notice to evict.

  Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criteria to be used is whether the reason for the eviction was through no fault of the tenant or guests.

- The family must notify OHA and the owner before moving out of the unit or terminating the lease.

  OHA Policy

  The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to OHA at the same time the owner is notified.

- The family must promptly give OHA a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

- The composition of the assisted family residing in the unit must be approved by OHA. The family must promptly notify OHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request OHA approval to add any other family member as an occupant of the unit.

  OHA Policy

  The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. OHA will determine eligibility of the new member in accordance with the policies in Chapter 3.

- The family must promptly notify OHA in writing if any family member no longer lives in the unit.
- If the OHA has given approval, a foster child or a live-in aide may reside in the unit. OHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when OHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

  OHA Policy

  Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

- The family must supply any information requested by the OHA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify OHA when the family is absent from the unit.

  OHA Policy

  Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to OHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and OHA policies related to drug-related and violent criminal activity.

- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and OHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless OHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

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Chapter 13

OWNERS

INTRODUCTION

Owners play a central role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term "owner" refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term "owner" includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations. However, this chapter is not meant to be an overview of all aspects of owner participation in the HCV program.

The chapter is organized in two parts:

> Part I: Owners in the HCV Program. This part discusses the role of an owner in OHA's HCV program and highlights key owner rights and responsibilities.
>
> Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between OHA and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including OHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.

PART I. OWNERS IN THE HCV PROGRAM

13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]

Recruitment

PHAs are responsible for ensuring that very low income families have access to all types and ranges of affordable housing in the PHA's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the PHA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the PHA's jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, PHAs must identify and recruit new owners to participate in the program.

OHA Policy

OHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. OHA will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

- Distributing printed material about the program to property owners and managers
- Contacting property owners and managers by phone or in-person
- Holding frequent owner workshops and recruitment/information meetings
- Participating in community based organizations comprised of private property and apartment owners and managers
- Developing working relationships with owners and real estate brokers associations

Outreach strategies will be monitored for effectiveness, and adapted accordingly.

Retention

In addition to recruiting owners to participate in the HCV program, PHAs must also provide the kind of customer service that will encourage participating owners to remain active in the program.

OHA Policy

All OHA activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

OHA will provide owners with a handbook that explains the program, including HUD and OHA policies and procedures, in easy-to-understand language.

Additionally, OHA will give special attention to helping new owners succeed through activities such as:

Formation of a **Landlord Advisory Council** to obtain direct input from participating HCV landlord on improving program administration and efficiency.

Providing an information sheet about inspections and other resource materials about HUD housing quality standards.

Providing other written information about how the program operates, including answers to frequently asked questions.

Providing an owner services team dedicated to assist owners with the move in process.

Publishing a quarterly informational news letter..

Offering monthly owner briefings and topic specific educational workshops for HCV participant landlords.

Offer oral interpretation and key documents translated from English into Cantonese, Spanish and Vietnamese.

Additional services may be undertaken on an as-needed basis, and as resources permit.

13-I.B. BASIC HCV PROGRAM REQUIREMENTS

HUD requires PHAs to aid families in their housing search by providing the family with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, or to help the family find a unit. Although the PHA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the PHA their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

> OHA Policy
>
> Owners that wish lease a unit to an eligible HCV family may contact OHA and list a rental unit on ***OHA's Available Unit Listings***. OHA maintains a listing of available rental units with owner contact information in collaboration with GoSection8.com. There is no charge to owner or family for the service. An owner may update, add or remove their listing online at **www.GoSection8.com**., and HCV families may register for a GoSection8 Quick Match rental notification service also available through the website. The listings are updated weekly and provided to new HCV families as part of the informational briefing packet. OHA also has the listing available for pick up in the lobbies of its buildings that house Section 8 staff.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential tenant. A PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to the PHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. In addition, the owner must document legal ownership of the specified unit. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The PHA will inspect the owner's dwelling unit at various stages of HCV program participation, to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards, as well as the process for HQS inspections at initial lease-up and throughout the family's tenancy.

PHAs must determine that the cost of the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, the PHA must determine that the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are required to use a standard lease used for renting to an unassisted family when renting to an assisted family. However, the HCV program requires that the Tenancy Addendum, which helps standardize the tenancy requirements for all assisted families, be added word-for-word to that lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

PHAs enter into a formal contractual relationship with owners by executing the Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HAP contract execution process. Specific HAP contract provisions and responsibilities are discussed later in this chapter 13.

13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452]

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Performing all of the owner's obligations under the Housing Assistance Payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the PHA information required under the HAP contract
- Collecting from the family any security deposit, the tenant's contribution to rent (that part of rent to owner not covered by the housing assistance payment from the PHA), and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services (unless paid by the family under the lease)
- Making modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Comply with the Violence Against Women Reauthorization Act of 2005 (VAWA) when screening and terminating tenants

13-I.D. OWNER QUALIFICATIONS

A PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where a PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

Owners Barred from Participation [24 CFR 982.306(a) and (b)]

A PHA must not approve the assisted tenancy if the PHA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct the PHA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

OHA Policy

Right to Limit or Restrict Owner Participation.

Owners who demonstrate a chronic inability to bring units up to HQS within prescribed time frames, i.e., repeated instances of rent abatement may be subject to restrictions or limited participation in OHA's Section 8 Housing Choice Voucher program. Example, an owner with three (3) abated contracts within a year may not be allowed to add additional contracts to the program until a pattern is established that HQS can be achieved without rent abatement activity. (See Section 8.II.C. - Risk Based Inspections)

Leasing to Relatives [24 CFR 982.306(d), HCV GB p. 11-2]

A PHA must not approve an RTA if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The PHA may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19]

A PHA must not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of the PHA (except a participant commissioner)
- Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. The PHA must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the PHA must include [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;
- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
- Analysis of and statement of consistency with state and local laws. The local HUD office, the PHA, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV program;
- If the case involves employment of a family member by the PHA or assistance under the HCV program for an eligible PHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;
- If the case involves an investment on the part of a member, officer, or employee of the PHA, description of the nature of the investment, including disclosure/divestiture plans.

Where the PHA has requested a conflict of interest waiver, the PHA may not execute the HAP contract until HUD has made a decision on the waiver request.

OHA Policy

In considering whether to request a conflict of interest waiver from HUD, OHA will consider factors the reasons for waiving the requirement; consistency with state and local laws; the existence of alternative housing available to families; the individual circumstances of a particular family; the specific duties of individuals whose positions present a possible conflict of interest; the nature of any financial investment in the property and plans for disclosure/divestiture; and the possible appearance of impropriety.

Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]

HUD regulations permit a PHA, at the PHA's discretion, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

If a PHA disapproves a request for tenancy because an owner is not qualified, it may not terminate the HAP contract for any assisted families that are already living in the owner's properties unless the owner has violated the HAP contract for those units [HCV GB p. 11-4].

OHA Policy

OHA will refuse to approve a request for tenancy if OHA becomes aware that any of the following are true:

- The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);
- The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The owner has engaged in any drug-related criminal activity or any violent criminal activity;
- The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;
- The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing; (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) Is drug-related criminal activity or violent criminal activity;
- The owner has a history or practice of renting units that fail to meet state or local housing codes; or
- The owner has not paid state or local real estate taxes, fines, or assessment.

In considering whether to disapprove owners for any of the discretionary reasons listed above, OHA will consider any mitigating factors. Such factors may include, but are not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others. Upon consideration of such circumstances, OHA may, on a case-by-case basis, choose to approve an owner.

Legal Ownership of Unit

OHA Policy

OHA will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without acceptable documentation of legal ownership (e.g., grant deed, management agreement, LLP documentation etc.).

13-I.E. NON-DISCRIMINATION [HAP Contract – Form HUD-52641]

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with OHA.

The owner must cooperate with OHA and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with OHA.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

PART II. HAP CONTRACTS

13-II.A. OVERVIEW

The HAP contract represents a written agreement between a PHA and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the PHA's obligations. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and lease the space. See chapter 15 for a discussion of any special housing types included in the OHA's HCV program.

If OHA has given approval for the family of the assisted tenancy, the owner and OHA execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

13-II.B. HAP CONTRACT CONTENTS

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A of the contract includes basic **contract information** about the name of the tenant family, address of the contract unit, names of all household members, first and last dates of initial lease term, amount of initial monthly rent to owner, amount of initial housing assistance payment, utilities and appliances to be supplied by owner and tenant, signatures of PHA and owner [HCV Guidebook, pp 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, PHAs do have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. OHA policy on the amount of security deposit an owner may collect is found in chapter 9.

In addition, PHAs have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner).

> <u>OHA Policy</u>
>
> OHA will presume that the owner will receive the housing assistance payment upon mailing unless the payment is returned to OHA. If an owner has not received the housing assistance payment after 10 working days, the owner may certify this to OHA. OHA will then cancel the original housing assistance payment and issue a new one.

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Lease of Contract Unit
- Maintenance, Utilities, and Other Services
- Term of HAP Contract
- Provision and Payment of Utilities and Appliances
- Rent to Owner: Reasonable Rent
- PHA Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- PHA and HUD Access to Premises and Owner's Records
- Exclusion of Third Party Rights
- Conflict of Interest
- Assignment of the HAP Contract
- Written Notices
- Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by OHA. The owner must sign the HUD Tenancy Addendum with the prospective tenant, and the tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

13-II.C. HAP CONTRACT PAYMENTS

General

During the term of the HAP contract, and subject to the provisions of the HAP contract, OHA must make monthly HAP payments to the owner on behalf of the family, at the beginning of each month. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month.

The amount of the HAP payment is determined according to the policies described in Chapter 6, and is subject to change during the term of the HAP contract. OHA must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by OHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant, plus OHA's HAP payment, should be equal to the rent specified in the lease (the rent to owner).

The family is not responsible for payment of the HAP payment, and OHA is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the total rent to the owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from OHA, the excess amount must be returned immediately. If OHA determines that the owner is not entitled to all or a portion of the HAP, OHA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

Owner Certification of Compliance

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from OHA, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

Late HAP Payments [24 CFR 982.451(a)(5)]

OHA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for penalties if OHA fails to make the HAP payment on time.

Penalties for late HAP payments can only be imposed if 1) the penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants; 2) it is the owner's normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the owner charges the assisted family for late payment of the family's share of the rent.

OHA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond OHA's control. In addition, late payment penalties are not required if OHA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

Termination of HAP Payments [24 CFR 982.311(b)]

A PHA must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the PHA must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

> OHA Policy
>
> The owner must inform OHA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.
>
> The owner must inform OHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide OHA with a copy of such judgment or determination.
>
> After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, OHA will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform OHA of the date when the family actually moves from the unit or the family is physically evicted from the unit.
>
> OHA may stop making housing assistance payments to the owner if the owner requested in writing that the PHA cancel the contract during a pending eviction.

13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453]

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS
- If the owner has violated any obligation under any other HAP contract under Section 8
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulation ns for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If a PHA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

A PHA's rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination the HAP contract. The PHA may also obtain additional relief by judicial order or action.

The PHA must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. The PHA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

OHA Policy

Before OHA invokes a remedy against an owner, OHA will evaluate all information and documents available to determine if the contract has been breached.

If relevant, OHA will conduct an audit of the owner's records pertaining to the tenancy or unit.

If it is determined that the owner has breached the contract, OHA will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

13-II.E. HAP CONTRACT TERM AND TERMINATIONS

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- The PHA terminates the HAP contract;
- The PHA terminates assistance for the family;
- The family moves from the assisted unit. In this situation, the owner is entitled to keep the housing assistance payment for the month when the family moves out of the unit.
- The family is absent from the unit for longer than the maximum period permitted by the PHA;
- The Annual Contributions Contract (ACC) between the PHA and HUD expires
- The PHA elects to terminate the HAP contract.

<u>OHA Policy</u>

OHA may elect to terminate the HAP contract in each of the following situations:

- Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];
- The unit does not meet HQS size requirements due to a change(s) in family composition [24 CFR 982.403] – see chapter 8;
- The unit does not meet HQS [24 CFR 982.404] – see chapter 8;
- The family breaks up [HUD Form 52641] – see chapter 3;
- The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If the PHA terminates the HAP contract, the PHA must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV Guidebook pg.15-4].

OHA Policy

The HAP contract terminates at the end of the calendar month that follows the calendar month in which OHA gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to OHA any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

Death of single member household [PIH Notice 2010-9]

The HAP contract terminates automatically upon the death of a single member household, including single member households with a live-in aide.

When the HOH dies and the only remaining household member is the live-in aide, the live-in aide is not entitled or eligible for any rental assistance or continued occupancy in a subsidized unit.

For deceased single member households or a household where the remaining household member is a live-in aide, PHAs are required to discontinue HAP to the owner no later than the first of the following month after the death occurred.

If an owner receives HAP for any month in which the owner is ineligible to receive HAP because of a deceased tenant, the PHA must immediately notify the owner in writing of the ineligible HAP and require the owner to repay the overpayment to the PHA within 30 days. If the owner does not comply, the PHA may deduct the amount due to the PHA from any amounts due to the owner under any other HAP contract. If there is no other HAP contract with the owner, the PHA may seek and obtain additional relief by judicial order or action in accordance with state and local laws.

13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]

The HAP contract cannot be assigned to a new owner without the prior written consent of the PHA.

An owner under a HAP contract must notify the PHA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the PHA.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that the PHA finds acceptable. The new owner must provide the PHA with a copy of the executed agreement.

OHA Policy

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

OHA must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

Within 10 business days of receiving the owner's request, OHA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to OHA that includes:

- A copy of the escrow statement or other document showing the transfer of title and recorded deed;
- A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;
- The effective date of the HAP contract assignment;
- A written agreement to comply with the terms of the HAP contract; and
- Confirmation that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, OHA will terminate the HAP contract with the old owner. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, OHA will process the leasing in accordance with the policies in chapter 9.

13-II.G. PROTECTING TENANTS AT FORECLOSURE [Notice PIH 2009-52]

PHA Responsibilities

The HAP contract provides that it shall be interpreted and implemented in accordance with HUD requirements. The contract incorporates by reference the statutory provisions discussed in this notice and the June 24, 2009 Federal Register notice HUD issued on this subject (74 Fed. Reg. 30106) through the definition of HUD requirements. As soon as possible after the issuance of this notice, the Department will revise the applicable forms in the HCV program. In the interim, the PHA must provide notice to the landlord and tenant that the terms of the HAP contract incorporate the changes in law outlined in this Notice and the Notice published in the Federal Register on June 24, 2009. The existing contracts and forms that have been executed will not need to be amended by the PHA. Once the new forms have been issued by HUD, the PHA must use the most recently issued form of the HAP contracts and tenancy addendums for participants that move or new participants.

Notifications:

For every unit in which a tenant receiving Housing Choice Voucher (HCV) assistance resides and is currently provided assistance under a HAP contract, the PHA must:

A. Provide notice to the Landlord or party executing the contract of the changes in law outlined in this Notice. This Notice can be provided in the most effective manner as determined by the PHA, including but not limited to providing information at landlord meetings, providing notice with the monthly payments, or independent mailings.

B. Provide notice to the Head of Household that is receiving HCV assistance of their rights as a result of the change in law outlined in this Notice. This Notice can be provided in the most effective manner as determined by the PHA, including but not limited to providing explanations of the tenant rights at annual reexaminations, tenant meetings, case management meetings, or a direct mailing.

C. Notify HCV applicants that have been issued a voucher as well as prospective owners about the new law. A PHA may also choose to provide notice to the local entity that oversees foreclosure actions, most commonly the Sherriff's office or local courts.

If a PHA learns that the property is in foreclosure, the PHA must:

A. Make all reasonable efforts to determine the status of the foreclosure and ownership of the property. This information can most likely be obtained through information that has been sent to the tenant notifying them of the foreclosure, and possibly in a 90 day notice to vacate. Additionally, PHA's may review legal notices in the local newspaper or the local governments web site to keep apprised of foreclosure actions initiated against owners of HCV assisted properties.

B. Continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract. With the exception of HUD-insured mortgages or loans, defaulting on a mortgage/loan is not a breach of the HAP contract.

C. Attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. The written agreement should include a request for owner information such as a Tax Identification Number, and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is nevertheless effective by operation of law.

D. Inform the tenant that they must continue to pay rent in accordance with the lease, and if the successor in interest refuses to accept payment or cannot be identified, the tenant should pay the rent into escrow, because failure to pay rent may constitute an independent ground for eviction.

E. If the PHA is unable to make HAP payments to the successor in interest due to: (1) An action or inaction by the successor in interest that prevents such payments, including the rejection of payments or the failure of the successor to maintain the property in accordance with Housing Quality Standards (HQS); or (2) An inability to identify the successor, the PHA should inform the family of this. In order to ensure adequate protection of the tenant's rights under the statutory authority as well as enforcing performance of the successor in interest under the HAP contract, the PHA should refer tenants, as services are needed, to the local Legal Aid Office.

The PHA must make reasonable inquiries to determine whether the unit, in addition to having a tenant receiving HCV assistance, will be (or has been) assisted under the Neighborhood Stabilization Program (NSP). The Department believes that units covered by this notice that receive such assistance will be rare. The PHA may inquire with the applicable units of local government to determine if properties occupied by Section 8 participants are under consideration for the NSP program.

In cases where the units have received assistance under the NSP, the PHA may use the funds that would have been used to pay the rent for other purposes. These other purposes include:

1. To pay utilities that are the owner's responsibility under the lease or applicable law, after taking reasonable steps to notify the owner that it intends to pay utilities rather than make payments to the owner;
   - The PHA is *not* required to notify the owner before making a utility payment if the unit has been or will be rendered uninhabitable by the termination or threat of termination of service. In that case, the PHA will notify the owner within a reasonable time after making the payment.

2. To pay the families moving costs, including security deposit costs.
3. Any funds that remain after use for these authorized purposes must only be used for housing assistance payments.

Any funds used for these purposes must be recorded and tracked in accordance with Generally Accepted Accounting Principles.

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Chapter 14

PROGRAM INTEGRITY

INTRODUCTION

OHA is committed to ensuring that subsidy funds made available to OHA are spent in accordance with HUD requirements.

This chapter covers HUD and OHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

> Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents OHA policies related to preventing, detecting, and investigating errors and program abuse.
>
> Part II: Corrective Measures and Penalties. This part describes the corrective measures OHA must and may take when errors or program abuses are found.

PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

OHA Policy

OHA anticipates that the vast majority of families and OHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that OHA's HCV program is administered effectively and according to the highest ethical and legal standards, the OHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

OHA will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

OHA will provide each applicant and resident with the publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.

OHA will place a warning statement about the penalties for fraud (as described in the False Statement Act, U.S.C. 1001 and 1010) on key OHA forms and form letters that request information from a family or owner.

OHA staff will be required to review and explain the contents of all HUD- and OHA-required forms prior to requesting family member signatures.

OHA will place a warning statement about the penalties for fraud (as described in the False Statement Act, U.S.C. 1001 and 1010) on key OHA forms and form letters that request information from a family member.

OHA will provide each OHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. P*rogram abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

14-I.B. DETECTING ERRORS AND PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, OHA will use a variety of activities to detect errors and program abuse.

Quality Control and Analysis of Data

OHA Policy

OHA will employ a variety of methods to detect errors and program abuse, including, but not limited to:

OHA routinely will use available sources of up-front income verification to compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

OHA will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

OMB Circular A-133 requires all PHAs that expend $500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of OHA activities and notifies OHA of errors and potential cases of program abuse.

OHA Policy

OHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of OHA's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

OHA Policy

OHA will encourage staff, residents, and the public to report possible program abuse.

14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

When OHA Will Investigate

OHA Policy

OHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for OHA to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

OHA will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

Consent to Release of Information [24 CFR 982.516]

OHA may investigate possible instances of error or abuse using all available OHA and public records. If necessary, OHA will require HCV families to give consent to the release of additional information.

Analysis and Findings

OHA Policy

OHA will base its evaluation on a preponderance of the evidence collected during its investigation.

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 that as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

For each investigation OHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed OHA, and (3) what corrective measures or penalties will be assessed.

Consideration of Remedies

All errors and instances of program abuse must be corrected prospectively. Whether OHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

OHA Policy

In the case of family-caused errors or program abuse, OHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, the PHA will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation has occurred, and (3) the effects of a particular remedy on family members who were not involved in the offense.

Notice and Appeals

OHA Policy

OHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which OHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through an informal review or hearing process, if applicable (see Chapter 16).

PART II: CORRECTIVE MEASURES AND PENALTIES

14-II.A. SUBSIDY UNDER- OR OVERPAYMENT

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

Corrections

Whether the incorrect subsidy determination results in an overpayment or underpayment of subsidy, OHA must promptly correct the HAP, family share and any utility reimbursement prospectively.

> OHA Policy
>
> Increases in the family share will be implemented only after the family has received 30 days notice.
>
> Any decreases in family share will become effective the first of the month following the discovery of the error.

Reimbursement

Whether the family or owner is required to reimburse OHA or OHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

Family obligations and general administrative requirements for participating in the program are discussed throughout this Plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows OHA to use incorrect information provided by a third party.

Family Reimbursement to OHA [HCV GB pp. 22-12 to 22-13]

OHA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. OHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, OHA will terminate the family's assistance in accordance with the policies in Chapter 12.

OHA Reimbursement to Family [HCV GB p. 22-12]

OHA Policy

OHA will not reimburse the family for any underpayment of subsidy when the underpayment clearly is caused by the family.

Prohibited Actions

An applicant or resident in the HCV program must not knowingly:

- Make a false statement to OHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

OHA Policy

Any of the following will be considered evidence of family program abuse:

Payment to the owner in excess of amounts authorized by the PHA for rent, security deposit, and additional services

Offering bribes or illegal gratuities to the OHA Board of Commissioners, employees, contractors, or other OHA representatives

Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to OHA on the family's behalf

Use of a false name or the use of falsified, forged, or altered documents

Intentional misreporting of family information or circumstances (e.g., income, family composition)

Omitted facts that were obviously known by a family member (e.g., not reporting employment income)

Admission of program abuse by an adult family member

OHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

Penalties for Program Abuse

In the case of program abuse caused by a family OHA may, at its discretion, impose any of the following remedies.

- OHA may require the family to repay excess subsidy amounts paid by OHA, as described earlier in this section.
- OHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 12 (for participants).
- OHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 13 respectively.
- OHA may refer the family for state or federal criminal prosecution as described in section 14-II.E.

14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

Owner Reimbursement to the PHA

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the PHA any excess subsidy received. The PHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the PHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

OHA Policy

In cases where the owner has received excess subsidy, OHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

Prohibited Owner Actions

An owner participating in the HCV program must not:

- Make any false statement to the PHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.453(a)(3)] including:

OHA Policy

Any of the following will be considered evidence of owner program abuse:

Charging the family rent above or below the amount specified by OHA

Charging a security deposit other than that specified in the family's lease

Charging the family for services that are provided to unassisted tenants at no extra charge

Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit

Knowingly accepting incorrect or excess housing assistance payments

Offering bribes or illegal gratuities to OHA's Board of Commissioners, employees, contractors, or other OHA representatives

Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to OHA

Residing in the unit with an assisted family

Remedies and Penalties

When OHA determines that the owner has committed program abuse, OHA may take any of the following actions:

- Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in Chapter 16.
- Terminate the HAP contract (See Chapter 13).
- Bar the owner from future participation in any OHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

14-II.D. OHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of OHA staff with respect to normal program administration are discussed throughout this Plan. This section specifically addresses actions of an OHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the OHA Personnel policy.

OHA-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

Repayment to OHA

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by PHA staff [HCV GB. 22-12].

OHA Reimbursement to Family

> OHA must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from OHA's administrative fee reserves [HCV GB p. 22-12].

Prohibited Activities

OHA Policy

Any of the following will be considered evidence of program abuse by OHA staff:

- Failing to comply with any HCV program requirements for personal gain
- Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant or owner
- Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to OHA
- Disclosing confidential or proprietary information to outside parties
- Gaining profit as a result of insider knowledge of OHA activities, policies, or practices
- Misappropriating or misusing HCV funds
- Destroying, concealing, removing, or inappropriately using any records related to the HCV program
- Committing any other corrupt or criminal act in connection with any federal housing program

14-II.E. CRIMINAL PROSECUTION

OHA Policy

When OHA determines that program abuse by an owner, family or OHA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, OHA will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the public housing program will be referred to the appropriate local, state, or federal entity.

14-II.F. FRAUD AND PROGRAM ABUSE RECOVERIES

A PHA may retain a portion of program fraud losses that the PHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The PHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits the PHA to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that the PHA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.

If HUD incurs costs on behalf of the PHA related to the collection, these costs must be deducted from the amount retained by the PHA.

Chapter 15

SPECIAL HOUSING TYPES
[24 CFR 982 Subpart M]

INTRODUCTION

PHAs may permit a family to use any of the special housing types discussed in this chapter. However, a PHA is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that PHAs must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. A PHA also may limit the number of families who receive HCV assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types.

> Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601].OHA Policy
>
> Families receiving assistance from OHA will be permitted to use only the following special housing types:
>
> > Single Room Occupancy
> >
> > Manufactured Homes (including manufactured home space rental)
> >
> > Homeownership
>
> Families are not permitted to use any other special housing types, unless use is needed as a reasonable accommodation so that the program is readily accessible to a person with disabilities. The description of prohibited special housing types is included here in case they are used as a reasonable accommodation.

This chapter consists of the following eight parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types. Although not considered a special housing type by HUD, Project-based vouchers have been included in this chapter since, like the other housing types included here, it is at a PHA's discretion to include these vouchers in their program.

> Part I: Single Room Occupancy
>
> Part II: Congregate Housing
>
> Part III: Group Homes
>
> Part IV: Shared Housing
>
> Part V: Cooperative Housing
>
> Part VI: Manufactured Homes (including manufactured home space rental)
>
> Part VII: Homeownership

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.***

PART I. SINGLE ROOM OCCUPANCY

[24 CFR 982.602 through 982.605]

15-I.A. OVERVIEW

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for SRO housing is 75 percent of the 0-bedroom payment standard amount on OHA's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

15-I.C. HOUSING QUALITY STANDARDS (HQS)

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

- *Access*: Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety*: All SRO facilities must have a sprinkler system that protects major spaces. "Major spaces" are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

  Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 CFR 982.605].

- *Sanitary Facilities*: At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- *Space and Security*: An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

  Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

PART II. CONGREGATE HOUSING

[24 CFR 982.606 through 982.609]

15-II.A. OVERVIEW

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by OHA, a family member or live-in aide may reside with the elderly person or person with disabilities. OHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), OHA must use the payment standard for a 0-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), OHA must use the 1-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

15-II.C. HOUSING QUALITY STANDARDS

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

> Congregate housing must have (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.
>
> The housing quality standards applicable to lead-based paint do not apply.

PART III. GROUP HOME

[24 CFR 982.610 through 982.614 and HCV GB p. 7-4]

15-III.A. OVERVIEW

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by OHA, a live-in aide may live in the group home with a person with disabilities. OHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be 0- or 1-bedroom, depending on OHA's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the group home size. The prorata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the prorata share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorata portion of the reasonable rent for the group home. In determining reasonable rent, OHA should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

15-III.C. HOUSING QUALITY STANDARDS

HQS requirements described in Chapter 8 apply to group homes except for the requirements stated below.

- *Sanitary Facilities*: A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service*: Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- *Space and Security*: Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.
- *Structure and Material*: To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- *Site and Neighborhood*: Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
  - Dangerous walks or steps
  - Instability
  - Flooding, poor drainage
  - Septic tank back-ups
  - Sewage hazards
  - Mud slides
  - Abnormal air pollution
  - Smoke or dust
  - Excessive noise
  - Vibrations or vehicular traffic
  - Excessive accumulations of trash
  - Vermin or rodent infestation, and
  - Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

PART IV. SHARED HOUSING

[24 CFR 982.615 through 982.618]

15-IV.A. OVERVIEW

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by OHA, a live-in aide may reside with the family to care for a person with disabilities. OHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

15-IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the shared housing unit size.

The prorata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private space by the total number of bedrooms in the unit.

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the prorata share of the utility allowance for the shared housing unit.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, OHA should consider whether sanitary and food preparation areas are private or shared.

15-IV.C. HOUSING QUALITY STANDARDS

OHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family*: Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security*: The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A 0-bedroom or 1-bedroom unit may not be used for shared housing.

PART V. COOPERATIVE HOUSING

[24 CFR 982.619]

15-V.A. OVERVIEW

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged “rent” a cooperative member is charged a “carrying charge.”

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member’s share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

15-V.C. HOUSING QUALITY STANDARDS

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

PART VI. MANUFACTURED HOMES

[24 CFR 982.620 through 982.624]

15-VI.A. OVERVIEW

A manufactured home is a manufactured structure, transportable in one or more parts, that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and OHA must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. OHA will provide assistance to such families who meet all other program requirements.

15-VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE

Family Income

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

Lease and HAP Contract

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

Payment Standards

The FMR for a manufactured home space is generally 40 percent of the published FMR for a 2-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. OHA will establish a payment standard for manufactured home spaces that is between 90-110 percent of the FMR for manufactured home spaces. OHA will use the same percentage or methodology it is using to establish other payment standards on the program.

Utility Allowance

OHA will establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

Space Rent

The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities.

Housing Assistance Payment

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the (gross) manufactured home space rent minus the TTP.

Rent Reasonableness

Initially, and annually thereafter OHA will determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. OHA will consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly HAP check, the owner certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the manufactured home park or elsewhere.

15-VI.D. HOUSING QUALITY STANDARDS

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

Manufactured Home Tie-Down

A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

PART VII. HOMEOWNERSHIP

[24 CFR 982.625 through 982.643]

15-VII.A. OVERVIEW [24 CFR 982.625]

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family. A family assisted under this option may be newly admitted or an existing participant in the HCV program. A PHA must have the capacity to operate a successful HCV homeownership program as defined by the regulations.

There are two forms of homeownership assistance a PHA may offer under this option: monthly homeownership assistance payments, or a single down payment assistance grant. PHAs may choose to offer either or both forms of homeownership assistance, or choose not to offer either. If a PHA offers both forms of assistance, a family must choose which form of assistance to receive.

OHA Policy

OHA will only offer monthly homeownership assistance payments. The homeownership option is limited to 5% of the total HCV Program in any fiscal year. OHA may exceed this limit only if needed as a reasonable accommodation.

OHA will offer a single down payment assistance grant if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. It is the sole responsibility of OHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. OHA will determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. OHA may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where OHA has otherwise opted not to implement a homeownership program.

OHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

15-VII.B. FAMILY ELIGIBILITY [24 CFR 982.627]

The family must meet all of the requirements listed below before the commencement of homeownership assistance. The PHA may also establish additional initial requirements as long as they are described in the PHA administrative plan.

- The family must qualify as a first-time homeowner, or may be a cooperative member. First-time homeowner is defined to mean that no member of the family has had an ownership interest in the residence of any family member during the three years preceding commencement of homeownership assistance. However, a single parent or displaced homemaker who, while married, owned a home with a spouse (or resided in a home owned by spouse) is considered a first-time homeowner for the purpose of the Section 8 Homeownership Program.
- The family must meet the Federal minimum income requirement. The family must have a gross annual income equal to the Federal minimum wage multiplied by 2000, based on the income of adult family members who will own the home. The PHA may establish a higher income standard for families. However, a family that meets the federal minimum income requirement (but not the PHA's requirement) will be considered to meet the minimum income requirement if it can demonstrate that it has been pre-qualified or pre-approved for financing that is sufficient to purchase an eligible unit.
- For disabled families, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
- For elderly or disabled families, welfare assistance payments for adult family members who will own the home will be included in determining whether the family meets the minimum income requirement. It will not be included for other families.
- The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (the term 'full-time employment' means not less than an average of 30 hours per week); and has been continuously so employed during the year before commencement of homeownership assistance for the family.
- The employment requirement does not apply to elderly and disabled families. In addition, if a family, other than an elderly or disabled family includes a person with disabilities, the PHA must grant an exemption from the employment requirement if the PHA determines that it is needed as a reasonable accommodation.
- The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option
- Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.
- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with 24 CFR 982.631(c).

- The family must have completed all required Home Ownership Counseling programs.
- The family must have fully repaid any outstanding debt to any Housing Authority.

15-VII.C. SELECTION OF FAMILIES

Participation in the Section 8 Homeownership Program is voluntary. OHA will offer the homeownership option to participating families who are Housing Choice Voucher program participants meeting the general requirements for continued participation in the program and:

- Are currently enrolled in the Family Self-Sufficiency (FSS) Program and are complying with their FSS contract or;.
- Are graduates of the FSS program or;.
- Are an elderly family or;
- Are a disabled family or;
- Are participating in an Individual Development Account (IDA) program, or any other HUD, state or local governmentally approved Homeownership Program.

<u>OHA Policy</u>

Under MTW authority, OHA may also admit a family to the Section 8 Homeownership program if they are participant in good standing in any OHA administered program and would otherwise qualify for Section 8 Homeownership participation (see Section 15-VII. B.), and have completed participation in an Individual Development Account (IDA) program, or any other HUD, state or local governmentally approved Homeownership Program.

Other OHA administered programs include but are not limited to the Conventional Public Housing program and Moderate Rehabilitation program. New admissions to the Section 8 Homeownership program from other OHA administered programs are limited to a maximum of 15 families per calendar year.

If OHA reaches the maximum number of families it can serve, it will start a wait list and select families to participate in the program based on time and date of application for the homeownership program.

15-VII.D. ELIGIBLE UNITS [24 CFR 982.628]

In order for a unit to be eligible, OHA must determine that the unit satisfies all of the following requirements:

- The unit must meet HUD's "eligible housing" requirements. The unit may not be any of the following:
  - A public housing or Indian housing unit;
  - A unit receiving Section 8 project-based assistance;
  - A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services;
  - A college or other school dormitory;
  - On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be under construction or already exist at the time the family enters into the contract of sale.
- The unit must be a one-unit property or a single dwelling unit in a cooperative or condominium.
- The unit must have been inspected by OHA and by an independent inspector designated by the family.
- The unit must meet Housing Quality Standards (see Chapter 8).
- For a unit where the family will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.
- For OHA-owned units all of the following conditions must be satisfied:
  - OHA informs the family, both orally and in writing, that the family has the right to purchase any eligible unit and an OHA-owned unit is freely selected by the family without OHA pressure or steering;
  - The unit is not ineligible housing;
  - OHA obtains the services of an independent agency to inspect the unit for compliance with HQS, review the independent inspection report, review the contract of sale, determine the reasonableness of the sales price and any OHA provided financing. All of these actions must be completed in accordance with program requirements.

OHA must not approve the unit if OHA has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

15-VII.E. ADDITIONAL PHA REQUIREMENTS FOR SEARCH AND PURCHASE [24 CFR 982.629]

It is the family's responsibility to find a home that meets the criteria for voucher homeownership assistance. The PHA may establish the maximum time that will be allowed for a family to locate and purchase a home, and may require the family to report on their progress in finding and purchasing a home. If the family is unable to purchase a home within the maximum time established by the PHA, the PHA may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

OHA Policy

The family must locate a home to purchase within 180-days from the date the family is issued a homeownership voucher. The family will be issued a homeownership voucher once they have completed all required pre-purchase counseling. Extensions may be granted on a case-by-case basis.

OHA will require periodic reports on the family's progress in finding and purchasing a home. The family will provide such reports on a monthly basis to the Homeownership Coordinator.

If the family is unable to purchase a home within the maximum time limit, OHA will issue the family a voucher to lease a unit if the family is in compliance with HCV program rules.

15-VII.F. PRE-PURCHASE HOMEOWNERSHIP COUNSELING [24 CFR 982.630]

Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by OHA. The following topics are required by OHA-for pre-purchase counseling:

- Home maintenance (including care of the grounds);
- Budgeting and money management;
- Credit counseling;
- How to negotiate the purchase price of a home;
- How to obtain homeownership financing and loan pre-approvals, including a description of types of financing that may be available, and the pros and cons of different types of financing;
- How to find a home, including information about homeownership opportunities, schools, and transportation in the PHA jurisdiction;
- Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;
- Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and
- Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

OHA may adapt the subjects covered in pre-purchase counseling (as listed) to the needs of individual families.

OHA may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If OHA offers a program of ongoing counseling for participants in the homeownership option, OHA shall have discretion to determine whether the family is required to participate in the ongoing counseling.

If OHA does not use a HUD-approved housing counseling agency to provide the counseling, OHA will ensure that its counseling program is consistent with the counseling provided under HUD’s Housing Counseling program.

15-VII.G. HOME INSPECTIONS, CONTRACT OF SALE, AND PHA DISAPPROVAL OF SELLER [24 CFR 982.631]

Home Inspections

OHA will not commence monthly homeownership assistance payments or provide down payment assistance grants for a family until OHA has inspected the unit and has determined that the unit passes HQS.

An independent professional inspector selected by and paid for by the family must also inspect the unit. The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

OHA will not require the family to use an independent inspector selected by OHA. The independent inspector may not be an OHA employee or contractor, or other person under control of OHA. However, OHA may establish standards for qualification of inspectors selected by families under the homeownership option.

OHA may disapprove a unit for assistance based on information in the independent inspector's report, even if the unit was found to comply with HQS.

Contract of Sale

Before commencement of monthly homeownership assistance payments or receipt of a down payment assistance grant, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give OHA a copy of the contract of sale. The contract of sale must:

- Specify the price and other terms of sale by the seller to the purchaser;
- Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by an independent inspector selected by the purchaser;
- Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory to the purchaser;
- Provide that the purchaser is not obligated to pay for any necessary repairs; and
- Contain a certification from the seller that the seller has not been debarred, suspended, or subject to a limited denial of participation under CFR part 24.

Disapproval of a Seller

In its administrative discretion, OHA may deny approval of a seller for the same reasons OHA may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)].

15-VII.H. FINANCING [24 CFR 982.632]

PHAs may establish requirements for financing purchase of a home under the homeownership option. This may include requirements concerning qualification of lenders, terms of financing, restrictions concerning debt secured by the home, lender qualifications, loan terms, and affordability of the debt. The PHA must establish policies describing these requirements in the administrative plan.

A PHA may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

> OHA Policy
> The family is responsible for securing financing. OHA has established financing requirements, listed below, and may disapprove proposed financing if OHA determines that the debt is unaffordable. OHA *may prohibit* the following forms of financing:
>
> 1. Balloon payment mortgages
> 2. Variable interest rate loans
> 3. Seller financing on a case-by-case basis
> 4. All costs can not exceed 50% monthly gross income
>
> If the mortgage is not FHA-insured, OHA will require the lender to comply with generally accepted mortgage underwriting standards consistent with those of HUD/FHA, Ginnie Mae, Fannie Mae, Freddie Mac, California Housing Finance Agency (CHFA), USDA Rural Housing Services, The Federal Home Loan Bank or other private lending institutions.

OHA requires that the participating family contribute a minimum of 1% of the purchase price from their own resources towards the transaction. This may include but is not limited to:

- Down payment
- Recurring closing costs
- Nonrecurring closing costs

15-VII.I. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS [24 CFR 982.633]

Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, OHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to OHA the homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

The family must comply with the following obligations:

- The family must comply with the terms of the mortgage securing debt incurred to purchase the home, or any refinancing of such debt.
- The family may not convey or transfer ownership of the home, except for purposes of financing, refinancing, or pending settlement of the estate of a deceased family member. Use and occupancy of the home are subject to 24 CFR 982.551 (h) and (i).
- The family must supply information to OHA or HUD as specified in 24 CFR 982.551(b). The family must further supply any information required by OHA or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.
- The family must notify OHA before moving out of the home.
- The family must notify OHA if the family defaults on the mortgage used to purchase the home.
- No family member may have any ownership interest in any other residential property.
- The family must comply with the obligations of a participant family described in 24 CFR 982.551, except for the following provisions which do not apply to assistance under the homeownership option: 24 CFR 982.551(c), (d), (e), (f), (g) and (j).
- The family must notify OHA before re-financing or incurring any additional debt secured by their home.
- The family's monthly payment must not exceed 50% of their gross monthly income.
- The family will be required to attend post purchase counseling courses.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

15-VII.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634]

Except in the case of a family that qualifies as an elderly or disabled family, other family members (described below) shall not receive homeownership assistance for more than:

- Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or
- Ten years, in all other cases.

The maximum term described above applies to any member of the family who:

- Has an ownership interest in the unit during the time that homeownership payments are made; or
- Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in this part.

15-VII.K. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES [24 CFR 982.635]

The monthly homeownership assistance payment is the lower of: the voucher payment standard minus the total tenant payment, or the monthly homeownership expenses minus the total tenant payment.

In determining the amount of the homeownership assistance payment, OHA will use the same payment standard schedule, payment standard amounts, and subsidy standards as those described in elsewhere in this plan for the Housing Choice Voucher program.

OHA may pay the homeownership assistance payments directly to the family, or at OHA's discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, OHA will pay the excess directly to the family.

Homeownership assistance for a family terminates automatically 2 years after the last homeownership assistance payment on behalf of the family. OHA may waive this requirement in cases where an automatic termination would result in extreme hardship for the family.

Homeownership expenses (not including cooperatives) only include amounts allowed by the OHA to cover:

- Principal and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home;
- Real estate taxes and public assessments on the home;
- Home insurance;
- The OHA allowance for maintenance expenses;
- The OHA allowance for costs of major repairs and replacements;
- The OHA utility allowance for the home;
- Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if OHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person;
- Land lease payments where a family does not own fee title to the real property on which the home is located; [see 24 CFR 982.628(b)].
- For a condominium unit, condominium operating charges or maintenance fees assessed by the condominium homeowner association.

Homeownership expenses for a cooperative member may only include amounts allowed by the OHA to cover:

- The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home;
- Principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt;
- Home insurance;
- The OHA allowance for maintenance expenses;
- The OHA allowance for costs of major repairs and replacements;
- The OHA utility allowance for the home; and
- Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if OHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person.
- Cooperative operating charges or maintenance fees assessed by the cooperative homeowner association.

15-VII.L. PORTABILITY [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]

Subject to the restrictions on portability included in HUD regulations and OHA policies, a family may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families. The receiving PHA may absorb the family into its voucher program, or bill OHA.

The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of, the unit are acceptable. The receiving PHA must promptly notify OHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by OHA.

15-VII.M. MOVING WITH CONTINUED ASSISTANCE [24 CFR 982.637]

A family receiving homeownership assistance may move with continued tenant-based assistance. The family may move with voucher rental assistance or with voucher homeownership assistance. Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home.

OHA will deny permission to move to a new unit with continued voucher assistance as follows:

- Lack of funding to provide continued assistance.
- At any time, OHA may deny permission to move with continued rental or homeownership assistance in accordance with 24 CFR 982.638, regarding denial or termination of assistance.
- In accordance with OHA’s policy regarding number of moves within a 12-month period.

OHA must deny the family permission to move to a new unit with continued voucher rental assistance if:

- The family defaulted on an FHA-insured mortgage; and
- The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and the family has moved, or will move, from the home within the period established or approved by HUD.

15-VII.N. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638]

At any time, OHA may deny or terminate homeownership assistance in accordance with HCV program requirements in 24 CFR 982.552 (Grounds for denial or termination of assistance) or 24 CFR 982.553 (Crime by family members).

OHA may also deny or terminate assistance for violation of participant obligations described in 24 CFR Parts 982.551 or 982.633.

OHA must terminate voucher homeownership assistance for any member of family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt.

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.

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 Intervention Blood Lead Level. This part describes OHA's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention 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 I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]

PHAs must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. If funds in the administrative fee reserve are not needed to cover PHA administrative expenses, the PHA may use these funds for other housing purposes permitted by Federal, State and local law.

If a PHA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct the PHA 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 PHA 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 PHAs to adapt the program to local conditions. This part discusses how PHAs 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 PHA 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.

PHAs must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the PHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the PHA 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 PHA 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, 982503 and 982.518, as necessary to implement the Agency's Annual MTW Plan***

Updating Payment Standards

When HUD updates its FMRs, PHAs must update their payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require a PHA to make further adjustments if it determines that rent burdens for assisted families in the PHA'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.

Unit-by-Unit Exceptions [24 CFR 982.503(c)(2)(ii)]

Unit-by-unit exceptions to a PHA'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 PHA's payment standard schedule.

When needed as a reasonable accommodation, a PHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 110 percent of the applicable FMR for the unit size [HCV GB 7-9]. The PHA may request HUD approval for an exception to the payment standard for a particular family if the required amount falls between 110 and 120 percent of the FMR.

OHA Policy

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RTA) is submitted. The family must document the need for the exception. 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.

16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. PHAs must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and Internet services are not included in the utility allowance schedule.

In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to the PHA about establishing utility allowance schedules.

Air Conditioning

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

> OHA Policy
>
> OHA does not include an allowance for air-conditioning in its schedule.

Reasonable Accommodation

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on the PHA'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 PHA will approve an allowance for air-conditioning, even if the PHA has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

Utility Allowance Revisions

PHAs must review their schedule of utility allowances each year, and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

The PHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

PART III: INFORMAL REVIEWS AND HEARINGS

16-III.A. OVERVIEW

When a PHA 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.

PHAs 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 Volume 60, No. 127, p 36490).

Decisions Subject to Informal Review

The PHA 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 PHA 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 PHA
- General policy issues or class grievances
- A determination of the family unit size under the PHA subsidy standards
- A PHA determination not to grant approval of the tenancy
- A PHA determination that the unit is not in compliance with the HQS

- A PHA 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 PHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the PHA 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.

OHA Policy

The OHA notification of denial will include a reminder of the 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.

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 PHA must notify the applicant of the PHA'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]

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the PHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the PHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

The PHA 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 PHA 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 PHA utility allowance schedule
- A determination of the family unit size under the PHA's subsidy standards
- A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the PHA's subsidy standards, or the PHA determination to deny the family's request for exception from the standards
- 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 PHA 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 PHA
- General policy issues or class grievances
- Establishment of the PHA schedule of utility allowances for families in the program
- A PHA determination not to approve an extension or suspension of a voucher term
- A PHA determination not to approve a unit or tenancy
- A PHA determination that a unit selected by the applicant is not in compliance with the HQS
- A PHA determination that the unit is not in accordance with HQS because of family size
- A determination by the PHA 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 are 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 PHA makes a decision that is subject to informal hearing procedures, the PHA 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 PHA 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 PHA'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, or stalking and their families.
- A copy of OHA's hearing procedures.
- 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 PHA 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 PHA 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 PHA 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 PHAs are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at the PHA offices before the hearing, any family documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, 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 on the business day 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 PHA, 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 PHA 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 PHA and the family were given the opportunity to examine any relevant documents in accordance with PHA 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 issues a decision, or 30 calendar days elapse, whichever occurs first. The Executive Director 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 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.

PHA Notice of Final Decision [24 CFR 982.555(f)]

The PHA is not bound by the decision of the hearing officer for matters in which the PHA 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 PHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the PHA 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 [24 CFR 5.514]

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 PHA 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 PHA'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)]

As discussed in Chapters 3 and 11, 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 PHA 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 PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA 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 PHA 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 PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA 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 PHA 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 PHA 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 LEP Plan.

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. The PHA 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 PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA 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 PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA 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 PHA

16-IV.A. OVERVIEW

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the PHA [24 CFR 982.54]. This part describes the PHA'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 collection.

Family Debts to OHA

OHA Policy

Any amount due to OHA by an HCV participant must be repaid by the family. 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 collection.

Repayment Agreement [24 CFR 792.103]

The term r*epayment agreement* refers to a formal document signed by a tenant or owner and provided to the PHA 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

PHA Policy

Amounts under $1,000 must be repaid within 12 months.

Amounts between $1,000 and $1,999 must be repaid within 24 months.

Amounts between $2,000 and $2,999 must be repaid within 30 months.

Amounts between $3,000 and 5,999 must be repaid within 36 months.

Amounts between $6,000 and $8,999 must be repaid within 48 months.

Amounts between $9,000 and $12,000 must be repaid within 60 months.

Execution of the Agreement

OHA Policy

The head of household and spouse/co-head (if applicable) must sign the repayment agreement.

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

PHA Policy

The PHA may not enter into a repayment agreement if there is already a repayment agreement in place with the family or owner, or the amounts owed by the family or owner exceed $12,000.

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 PHA 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 PHA budget and financial statements for the program;
- Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

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

PHAs 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.

Upfront Income Verification (UIV) Records

PHAs 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 PHA 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

PHAs may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

PHAs must establish and implement a system of records management that ensures that any criminal record received by the PHA 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 PHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

PHAs must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA 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 PHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by a PHA other than under 24 CFR 5.905.

Medical/Disability Records

PHAs are not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA should not place this information in the tenant file. The PHA should destroy the document.

PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

16-VII.A. OVERVIEW

PHAs have certain responsibilities relative to children with environmental intervention 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)]

PHAs must report the name and address of a child identified as having an environmental intervention 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 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 PHA 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 blood lead level.

If the PHA obtains names and addresses of environmental intervention blood lead level children from the public health department(s), the PHA 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 PHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, the PHA 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 PHA is not providing such a report.

PART VIII: DETERMINATION OF INSUFFICIENT FUNDING

16-VIII.A. OVERVIEW

The HCV regulations allow PHAs 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 PHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology the PHA will use to determine whether or not the PHA 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: CONFLICT OF INTEREST POLICY

16-IX.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-IX.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.

2. 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-IX.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 MIS Staff All Finance Staff	• *CA Statement of Economic Interests* • *OHA Statement of Employee and Familial Participation in Housing Authority Programs*	• Annually Annually
• Contractors Sub-contractors Agents of the Authority	• *CA Statement of Economic Interests* *OHA Statement of Employee and Familial Participation in Housing Authority Programs*	Upon contract with OHA, annually thereafter Upon contract with OHA, annually thereafter

16-IX.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-IX.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.

PART X: GIFT POLICY

16-X.A. OVERVIEW

The Leased Housing Department utilizes OHA's Gift Policy.

16-IX.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 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.

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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 PHA's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the PHA 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.

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 and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is consistent with the PHA'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.

OHA Policy

Under MTW Demonstration Program, OHA is authorized to determine the percentage of housing voucher assistance that it is permitted to be project-based, 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.*

OHA will operate an MTW Section 8 Project-Based Voucher Program and reserve a maximum of **2,650** vouchers for project-based assistance. PBV assistance may be attached to existing, newly constructed, rehabilitated or sponsor based housing.

17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA 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

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. PHAs may not use voucher program funds to cover relocation costs, except that PHAs 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 PHA to ensure the owner complies with these requirements.

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

The PHA must describe the procedures for owner submission of PBV proposals and for the PHA selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements.

17-II.B. OWNER PROPOSAL SELECTION PROCEDURES

The PHA must select PBV proposals in accordance with the selection procedures in the PHA 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,
- 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 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 policy, 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.

Solicitation and Selection of PBV Proposals [24 CFR 983.51(b) and (c)]

PHA 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 PHA. 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 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 newspapers and trade journals.

The Oakland Tribune

OHA will also utilize non-English language newspapers

In addition, OHA will post the RFP 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 three 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 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. Incomplete proposals will not be reviewed.

OHA will rate and rank proposals for rehabilitated and newly constructed housing using 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 PHA goal of deconcentrating 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; 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 newspapers and 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 newspapers and trade journals mentioned above for at least one day per week for three 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.

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. Incomplete proposals will not be reviewed.

OHA will rate and rank proposals for rehabilitated and newly constructed housing using 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 PHA goal of deconcentrating poverty and expanding housing and economic opportunities;
- Extend 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; and
- If applicable, 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 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. A Sponsor Based Housing project may only be selected in response to an OHA Request for Proposals (RFP) and an award must be approved by the OHA Board of Commissioners.

OHA will advertise its RFP for Project-Based Sponsor Based Housing in the following newspapers and trade journals.

The Oakland Tribune

OHA will also utilize non-English language newspapers

In addition, OHA will post the RFP 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 three 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. Incomplete proposals will not be reviewed.

OHA will rate and rank proposals for Project-Based Sponsor Based Housing using 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;

- 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 PHA goal of deconcentrating poverty and expanding housing and economic opportunities for families with disabilities; and
- Extend to which the project preserves or replaces affordable housing units at risk of non renewal or loss of a previously committed affordable housing subsidy;

OHA Selection of Proposals Subject to Competition under a Federal, State, or Local Housing Assistance Program

OHA will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program.

OHA will 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 developers face, OHA may distribute project-based assistance via the competitive processes for the release of affordable housing funding distributed through a ***City of Oakland, Notice of Funding Availability (NOFA) for development, preservation or rehabilitation of affordable rental housing.***

OHA will announce that it is accepting PBV proposals, directly within the City of Oakland's NOFA offering. OHA will post any minimum threshold requirements, proposal submission procedures, the submission deadline date and the award process on OHA's electronic web site (www.oakha.org).

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 less than the number of vouchers requested by an owner proposal.

A project selected for funding through a competitive ***City of Oakland, 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. 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]

The initial contract rent must be approved by an independent entity based on an appraisal by a licensed, state-certified appraiser. 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 PHA jurisdiction (unless the PHA 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 and appraiser 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 and appraiser for their services. OHA's independent entity and/or appraiser 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 PHA 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 included 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 in the Oakland Tribune. 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 also post the public notice of selection of PBV proposals on the OHA website for a period of not less that 30-days.

17-II.C. HOUSING TYPE [24 CFR 983.52]

The PHA 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 PHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing.

17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS

Ineligible Housing Types [24 CFR 983.53]

The PHA 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 PHA may not attach or pay PBV assistance for a unit occupied by an owner and the PHA 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.

Subsidized Housing [24 CFR 983.54]

A PHA 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);

(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 PHA 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 PHA 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 PHA 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

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

The PHA 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.

The PHA does not need to conduct a subsidy layering review in the case of a HAP contract for an existing structure or if the applicable state or local agency has conducted such a review [FR Notice 11/24/08].

17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT

OHA Policy (MTW)

Under MTW authority, 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

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 PHA 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 PHA 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 PHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the PHA, 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 PHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The PHA 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.

Environmental reviews are not required for existing structures unless otherwise required by law or regulation [FR Notice 11/24/08].

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 PHA 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-HAP Contract Inspections [24 CFR 983.103(b)]

The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with HQS.

Turnover Inspections [24 CFR 983.103(c)]

Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS.

Annual Inspections [24 CFR 983.103(d)]

At least annually during the term of the HAP contract, the PHA 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 annual inspection requirement.

If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, the PHA 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 annual inspection requirements detailed above.

Other Inspections [24 CFR 983.103(e)]

The PHA 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 PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

The PHA 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 PHA 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 PHA and approved by HUD.

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 PHA 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(a)].

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and the PHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(b)].

> 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(c)]

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- 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;
- 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;
- Estimated initial rents to owner for the contract units;

- 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 PHA, specifications and plans. For new construction units, the description must include the working drawings and specifications.
- 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 PHA 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 PHA in the form and manner required by the PHA:

- 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 PHA'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 PHA 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 PHA 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 PHA must not enter into the HAP contract.

If the PHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the PHA 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 [FR Notice 11/24/08]

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 fifteen (15) years.

OHA Policy

The term of a PBV HAP contract will be negotiated with the owner on a case-by-case basis. Under MTW authority, the initial term of the PBV HAP contract may be approved in excess of fifteen (15) years if requested to match the term of another affordable housing subsidy component committed to the project. The HAP contract will include language noting that the funding of the contract is subject to the availability of Appropriations.

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 fifteen (15) 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)]

The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the PHA 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.

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 PHA 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 PHA. In this case, families living in the contract units must be offered tenant-based assistance.

Remedies for HQS Violations [24 CFR 983.207(b)]

The PHA 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 PHA determines that a contract does not comply with HQS, the PHA 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.

> <u>OHA Policy</u>
>
> 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

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

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

OHA will consider adding contract units to the HAP contract when the PHA 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.

17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.206(c) 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 983.209]

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 PHA, 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.

17-V.F. ADDITIONAL HAP REQUIREMENTS

Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.207(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 PHA 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 PHA 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 PHA, 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 PHA 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

OHA may select families for the PBV program from those who are:

- Participants in a OHA's tenant-based voucher program,
- Residing in the proposed PBV contract unit on the date the proposal is awarded,
- From those who have applied for admission to OHA's tenant-based voucher program,
- 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.
- From those who are in-place public housing conversion families in good standing.

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.

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 PHA, 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 PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. 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

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

If the in- place family is in the wrong sized unit, the family may not be admitted to the PBV program for occupancy in their original unit.

The owner may:

- Relocate the family to an appropriately sized PBV unit within the development,
- Place the family on the PBV site-based waiting list for an appropriate sized unit.

OHA 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 during the initial one year lease term. After the initial one year lease term, OHA will notify the family and the owner of the family's need to move based on occupancy in a wrong-size PBV unit (see policy 17-VII.C. MOVES).

Public Housing Conversions

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.

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 be 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

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 Policy

Under MTW Authority, 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;

- Tenant Selection Plan for selecting tenants from the waiting list which cover tenant selection, preferences, screening criteria and procedures and requirements when applicants are ineligible.

17-VI.D. SELECTION FROM THE WAITING LIST AND DETERMINING UNIT SIZE

The PBV site-based waiting list must establish selection criteria or preferences for occupancy of particular PBV units.

Preferences

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.

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 at least once annually. 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 (subject to MTW authorization)

Under MTW authority, 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 use 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, OHA will use the following chart to determine the appropriate unit size for the family:

PBV Unit Size	Minimum Number in Household	Maximum Number in Household
SRO	1	1
0-BR	1	2
1-BR	1	3
2-BR	2	5
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 PHA 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 PHA'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.

Acceptance of Offer

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 PHA 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 PHA must provide a briefing packet that explains how the PHA 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 PHA 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 PHA 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

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

The owner must promptly notify OHA of any vacancy or expected vacancy in a contract unit. The unit must be filled by the next eligible family on the site-based waiting list.

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 PHA 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, the OHA 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 the OHA 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]

PHA Responsibility

The PHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA 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.

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:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- 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, 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.

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 provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

<u>OHA Policy</u>

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:

- The program tenancy requirements;
- The composition of the household as approved by OHA (the names of family members and any OHA-approved live-in aide);
- 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) and 983.257(b)]

The initial lease term must be for at least one year. Upon expiration of the lease, an owner may renew the lease, refuse to renew the lease for "good cause," or refuse to renew the lease without good cause, if such action is permitted by the City of Oakland rent control ordinance. If the owner refuses to renew the lease without good cause, OHA must provide the family with a tenant-based voucher and remove the unit from the PBV HAP contract.

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 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 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.

Security Deposits [24 CFR 983.258]

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
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> OHA will allow the owner to collect a security deposit amount the owner determines is appropriate.
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> 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 983.259]

If the PHA determines that a family is 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, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and the PHA 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, based on the availability of assistance:

- PBV assistance in the same building or project;
- MTW Housing Choice Voucher tenant-based assistance.

If OHA offers the family a tenant-based voucher, OHA must 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). [24 CFR 983.259(c)]

OHA Policy

Under MTW authority, 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, 982503 and 982.518, as necessary to implement the Agency's Annual MTW Plan.*

Family Right to Move

The family may terminate the 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 PHA. If the family wishes to move with continued tenant-based assistance, the family must contact the PHA 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 PHA 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 PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance in accordance with PHA policy.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

OHA Policy

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 for the next available voucher based on the date and time of the family's request.

A public housing conversion family is exempt from a 12 month minimum stay requirement and may immediately request transfer to the HCV tenant-based program and move from the development (see 17-VI.B, Public Housing Conversions).

17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP

OHA Policy

Under MTW authority, 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 tem 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, 982503 and 982.518, as necessary to implement the Agency's Annual MTW Plan.

17-VIII.B. RENT LIMITS

The rent to owner must not exceed the lowest of the following amounts:

- An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

<u>OHA Policy</u>

OHA will not approve a PBV program initial rent to owner that is higher than the applicable Voucher Payment Standard for the unit size.

Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]

When determining the initial rent to owner, the PHA 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 PHA 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 PHA 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.

Redetermination of Rent [24 CFR 983.302]

The PHA 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 PHA, 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 PHA. The PHA 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 PHA 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.

Notice of Rent Change

The rent to owner is redetermined by written notice by the PHA to the owner specifying the amount of the redetermined rent. The PHA 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.

PHA-owned Units [24 CFR 983.301(g)]

For PHA-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 PHA must use the rent to owner established by the independent entity.

17-VIII.C. REASONABLE RENT

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 PHA.

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 PHA 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 a state certified appraiser.
>
> The 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.

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 PHA. 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.

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 PHA 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]

At its discretion, a PHA may reduce the initial rent to owner because of other governmental subsidies, including grants, or other subsidized financing.

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) as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- 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 PHA 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 PHA agree on a later date.

Except for discretionary vacancy payments, the PHA 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 PHA 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 PHA 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 the 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:

- 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);
- 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;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- 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.

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 PHA. 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

The OHA will make utility reimbursements to 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.

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GLOSSARY

A.	**ACRONYMS USED IN SUBSIDIZED HOUSING**
AAF	Annual adjustment factor (published by HUD in the Federal Register and used to compute annual rent adjustments)
ACC	Annual contributions contract
ADA	Americans with Disabilities Act of 1990
BR	Bedroom
CDBG	Community Development Block Grant (Program)
CFR	Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as "the regulations")
CPI	Consumer price index (published monthly by the Department of Labor as an inflation indicator)
FDIC	Federal Deposit Insurance Corporation
FHA	Federal Housing Administration
FICA	Federal Insurance Contributions Act (established Social Security taxes)
FMR	Fair market rent
FR	Federal Register
FSS	Family Self-Sufficiency (Program)
FY	Fiscal year
FYE	Fiscal year end
GAO	Government Accountability Office
GR	Gross rent
HAP	Housing assistance payment
HCV	Housing choice voucher (Section 8)
HOPWA	Housing Opportunities for Persons with AIDS
HQS	Housing quality standards.
HUD	Department of Housing and Urban Development
HUDCLIPS	HUD Client Information and Policy System
IG	(HUD Office of) Inspector General
IPA	Independent public accountant
IRA	Individual Retirement Account
IRS	Internal Revenue Service
JTPA	Job Training Partnership Act
LBP	Lead-based paint
MHSA	**Mental Health Services Act**

MSA	Metropolitan statistical area (established by the U.S. Census Bureau)
MTW	Moving To Work (HUD acronym) or Making Transitions Work (OHA acronym)
MTCS	Multi-family Tenant Characteristics System (now the Form HUD-50058 submodule of the PIC system)
NOFA	Notice of funding availability
OHA	Oakland Housing Authority
OMB	Office of Management and Budget
PASS	Plan for Achieving Self-Support
PHA	Public housing agency
PHRA	Public Housing Reform Act of 1998 (also known as the Quality Housing and Work Responsibility Act)
PIC	PIH Information Center
PIH	(HUD Office of) Public and Indian Housing
PS	Payment standard
QC	Quality control
QHWRA	Quality Housing and Work Responsibility Act of 1998 (also known as the Public Housing Reform Act)
REAC	(HUD) Real Estate Assessment Center
RFP	Request for proposals
RFTA	Request for tenancy approval
RIGI	Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)
SEMAP	Section 8 Management Assessment Program
SRO	Single room occupancy
SSA	Social Security Administration
SSI	Supplemental security income
TANF	Temporary assistance for needy families
TR	Tenant rent
TTP	Total tenant payment
UA	Utility allowance
URP	Utility reimbursement payment
UPCS	Uniform Property Conditions Standards
VAWA	Violence Against Women Reauthorization Act of 2005

B. GLOSSARY OF TERMS IN SUBSIDIZED HOUSING

Absorption. In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.

Accessible. The facility or portion of the facility can be approached, entered, and used by individuals with physical handicaps.

Adjusted Income. Annual income, less allowable HUD deductions.

Adjusted Annual Income. Same as Adjusted Income.

Administrative fee. Fee paid by HUD to the PHA for administration of the program. See §982.152.

Administrative fee reserve (formerly "operating reserve"). Account established by PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See §982.155. Administrative fee reserves from FY 2004 and 2005 funding are further restricted to activities related to the provision of tenant-based rental assistance authorized under Section 8.

Administrative plan. The plan that describes PHA policies for administration of the tenant-based programs. The Administrative Plan and any revisions must be approved by the PHA's board and included as a supporting document to the PHA Plan. See §982.54.

Admission. The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.

Amortization payment. In a manufactured home space rental: The monthly debt service payment by the family to amortize the purchase price of the manufactured home.

Annual contributions contract (ACC). *The* written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.

Annual Income. The anticipated total income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations.

Applicant (applicant family). A family that has applied for admission to a program but is not yet a participant in the program.

Area Exception Rent. An amount that exceeds the published FMR. See §982.504(b).

"As-paid" States. States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

Assets. (See Net Family Assets.)

Auxiliary aids. Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance.

Budget authority. An amount authorized and appropriated by the Congress for payment to HAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

Child. *A* member of the family other than the family head or spouse who is under 18 years of age.

Child care expenses. 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.

Citizen. *A* citizen or national of the United States.

Co-head. An individual in the household who is equally responsible for the lease with the head of household. A family may have a co-head or spouse but not both. A co-head never qualifies as a dependent. The co-head must have legal capacity to enter into a lease.

Common space. In shared housing: Space available for use by the assisted family and other occupants of the unit.

Computer match. The automated comparison of data bases containing records about individuals.

Confirmatory review. An on-site review performed by HUD to verify the management performance of a PHA.

Consent form. Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the collection of other information to determine eligibility or level of benefits.

Congregate housing. Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see §982.606 to §982.609.

Contiguous MSA. In portability (under subpart H of part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

Continuously assisted. An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

Contract. (See Housing Assistance Payments Contract.)

Contract authority. The maximum annual payment by HUD to a PHA for a funding increment.

Cooperative (term includes mutual housing). Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type: see §982.619.

Covered families. Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance 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 the assistance.

Dating violence. 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

Dependent. A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

Disability assistance expenses. Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Disabled family. A family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

Disabled person. See Person with Disabilities.

Displaced family. A family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

Domestic violence. 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, 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.

Domicile. The legal residence of the household head or spouse as determined in accordance with State and local law.

Drug-related criminal activity. As defined in 42 U.S.C. 1437f(f)(5).

Drug-trafficking. The illegal manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Economic Self-Sufficiency Program. Any program designed to encourage, assist, train or facilitate the economic independence of assisted families, or to provide work for such families. Can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as treatment for drug abuse or mental health treatment). Includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). Also see §5.603(c).

Elderly family. A family whose head, spouse, or sole member is a person who is at least 62 years of age; or two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

Elderly Person. An individual who is at least 62 years of age.

Eligible Family (Family). A family that is income eligible and meets the other requirements of the Act and Part 5 of 24 CFR.

Employer Identification Number (EIN). The nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation.

Evidence of citizenship or eligible status. The documents which must be submitted to evidence citizenship or eligible immigration status. (See §5.508(b).)

Extremely Low Income Family. A family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30 percent of median income if HUD finds such variations are necessary due to unusually high or low family incomes. *(CFR 5.603)*

Facility. All or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other real or personal property or interest in the property.

Fair Housing Act means title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988

Fair market rent (FMR). The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the Federal Register in accordance with 24 CFR part 888.

Family. Includes but is not limited to the following, and can be further defined in PHA policy.

- A family with or without children (the temporary absence of a child from the home due to placement in foster care is not considered in determining family composition and family size)
- An elderly family or a near-elderly family
- A displaced family
- The remaining member of a tenant family
- A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

Family rent to owner. In the voucher program, the portion of rent to owner paid by the family.

Family self-sufficiency program **(**FSS program). The program established by a PHA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).

Family share. The portion of rent and utilities paid by the family. For calculation of family share, see §982.515(a).

Family unit size. The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

Federal agency. A department of the executive branch of the Federal Government.

Foster Child Care Payment. Payment to eligible households by state, local, or private agencies appointed by the State, to administer payments for the care of foster children.

Full-time Student. A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). (*CFR 5.603*)

Funding increment. Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

Gross rent. The sum of the rent to owner plus any utility allowance.

Group home. A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). A special housing type: see §982.610 to §982.614.

Handicap. Any condition or characteristic that renders a person an individual with handicaps. See 24CFR 8.3.

Handicap Assistance Expense. See "Disability Assistance Expense."

HAP contract. Housing assistance payments contract. (Contract). A written contract between the PHA and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

Housing assistance payment. The monthly assistance payment by a PHA, which includes: (1) A payment to the owner for rent to the owner under the family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

Housing agency (HA). A State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing. ("PHA" and "HA" mean the same thing.)

Housing Opportunities for Persons with AIDS (HOPWA) Program. A program was established by HUD to address the specific needs of persons living with HIV/AIDS and their families.

Housing Quality Standards. The HUD minimum quality standards for housing assisted under the voucher program.

HUD. The Department of Housing and Urban Development.

Immediate family member. A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or any other person living in the household of that person and related to that person by blood and marriage.

Imputed Asset. Asset disposed of for less than Fair Market Value during two years preceding examination or reexamination.

Imputed Income. HUD passbook rate multiplied by the total cash value of assets. Calculation used when net family assets exceed $5,000.

Imputed welfare income. An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction, but is included in the family's annual income and therefore reflected in the family's rental contribution.

Income. Income from all sources of each member of the household, as determined in accordance with criteria established by HUD.

Income For Eligibility. Annual Income.

Income information means information relating to an individual's income, including:

- All employment income information known to current or previous employers or other income sources
- All information about wages, as defined in the State's unemployment compensation law, including any Social Security Number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, Employer Identification Number of an employer reporting wages under a State unemployment compensation law
- Whether an individual is receiving, has received, or has applied for unemployment compensation, and the amount and the period received
- Unearned IRS income and self-employment, wages and retirement income
- Wage, social security, and supplemental security income data obtained from the Social Security Administration.

Individual with handicaps**.** Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.

Initial PHA. In portability, the term refers to both: (1) A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

Initial payment standard. The payment standard at the beginning of the HAP contract term.

Initial rent to owner. The rent to owner at the beginning of the HAP contract term.

Jurisdiction. The area in which the PHA has authority under State and local law to administer the program.

Landlord**.** Either the owner of the property or his/her representative or the managing agent or his/her representative, as shall be designated by the owner.

Lease. A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

Live-in aide. A person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

- Is determined to be essential to the care and well-being of the persons;
- Is not obligated for the support of the persons; and
- Would not be living in the unit except to provide the necessary supportive services.

Local Preference. A preference used by the PHA to select among applicant families.

Low Income Family. A family whose income does not exceed 80% of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD

may establish income limits higher or lower than 80% for areas with unusually high or low incomes.

Manufactured home. A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type: see §982.620 and §982.621.

Manufactured home space. In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See §982.622 to §982.624.

Medical expenses. 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. (A deduction for elderly or disabled families only.) These allowances are given when calculating adjusted income for medical expenses in excess of 3% of annual income.

Mental Health Services Act (MHSA) Housing Program. State of California housing program that offers permanent financing and capitalized operating subsidies for the development of permanent supportive housing, including both rental and shared housing, to serve persons with serious mental illness and their families who are homeless or at risk of homelessness.

Merger Date. October 1, 1999.

Minor. A member of the family household other than the family head or spouse, who is under 18 years of age.

Mixed family. *A* family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

Monthly adjusted income. One twelfth of adjusted income.

Monthly income. One twelfth of annual income.

Mutual housing. Included in the definition of "cooperative."

National. *A* person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Near-elderly family. A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

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.

- 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 §5.609.

- 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.

Noncitizen. *A* person who is neither a citizen nor national of the United States.

Notice of Funding Availability (NOFA). For budget authority that HUD distributes by competitive process, the Federal Register document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

Office of General Counsel (OGC). The General Counsel of HUD.

Owner. Any person or entity with the legal right to lease or sublease a unit to a participant.

PHA Plan. The annual plan and the 5-year plan as adopted by the PHA and approved by HUD.

PHA's quality control sample. An annual sample of files or records drawn in an unbiased manner and reviewed by a PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. For minimum sample size see CFR 985.3.

Participant *(participant family).* A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

Payment standard. The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

Persons With Disabilities. A person who has a disability as defined in 42 U.S.C. 423 or a developmental disability as defined in 42 U.S.C. 6001. Also includes a person who is determined, under HUD regulations, to have a physical or mental impairment that is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions. For purposes of reasonable accommodation and program accessibility for persons with disabilities, means and "individual with handicaps" as defined in 24 CFR 8.3. Definition does not exclude persons who have AIDS or conditions arising from AIDS, but does not include a person whose disability is based solely on drug or alcohol dependence (for low-income housing eligibility purposes). See "Individual with handicaps"

Portability. Renting a dwelling unit with Section 8 housing choice voucher outside the jurisdiction of the initial PHA.

Premises. The building or complex in which the dwelling unit is located, including common areas and grounds.

Private space. In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

Processing entity. The person or entity that, under any of the programs covered, is responsible for making eligibility and related determinations and any income reexamination. In the Section 8 program, the "processing entity" is the "responsible entity."

Project owner. The person or entity that owns the housing project containing the assisted dwelling unit.

***Public Assistance*.** Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by Federal, state, or local governments.

Public Housing Agency *(PHA)*. Any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

Reasonable rent. A rent to owner that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.

***Receiving PHA*.** In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

***Recertification*.** Sometimes called reexamination. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported.

***Remaining Member of Tenant Family*.** Person left in assisted housing who may or may not normally qualify for assistance on own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).

Rent to owner. The total monthly rent payable to the owner under the lease for the unit (also known as contract rent). Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

Residency Preference. A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area ("residency preference area").

Residency Preference Area. The specified area where families must reside to qualify for a residency preference.

Responsible entity. For the public housing and the Section 8 tenant-based assistance, project-based certificate assistance, and moderate rehabilitation programs, the responsible entity means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

Secretary. The Secretary of Housing and Urban Development.

Section 8. Section 8 of the United States Housing Act of 1937.

Section 8 covered programs. *A*ll HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8 assisted housing for which loans are made under section 202 of the Housing Act of 1959.

Section 214 Section 214 of the Housing and Community Development Act of 1980, as amended

Section 214 covered programs is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in §5.500.

Security Deposit. A dollar amount (maximum set according to the regulations) which can be used for unpaid rent or damages to the owner upon termination of the lease.

Set-up charges. In a manufactured home space rental: Charges payable by the family for assembling, skirting and anchoring the manufactured home.

Shared housing. A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type: see §982.615 to §982.618.

Single Person. A person living alone or intending to live alone.

Single room occupancy housing *(SRO).* A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. A special housing type: see §982.602 to §982.605.

***Social Security Number (SSN)*.** The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

Special admission. Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.

***Special housing types*.** See subpart M of part 982. Subpart M states the special regulatory requirements for: SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

Specified Welfare Benefit Reduction. Those reductions of welfare benefits (for a covered family) that may not result in a reduction of the family rental contribution. A reduction of welfare benefits because of fraud in connection with the welfare program, or because of welfare sanction due to noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

Spouse. The marriage partner of the head of household.

Stalking. To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and 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 (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

State Wage Information Collection Agency (SWICA). The state agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the state, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.

Subsidy standards. Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

Suspension. Stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the PHA decides to allow extensions or suspensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions or suspensions, and how the PHA determines the length of any extension or suspension. This practice is also called “tolling”.

Tenancy Addendum. For the Housing Choice Voucher Program, the lease language required by HUD in the lease between the tenant and the owner.

Tenant. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

Tenant rent to owner. See “Family rent to owner”.

Term of Lease. The amount of time a tenant agrees in writing to live in a dwelling unit.

Total Tenant Payment (TTP). The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

Uniform Property Conditions Standards.

Unit. Residential space for the private use of a family. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from zero (0) bedrooms to six (6) bedrooms.

Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement. In the voucher program, the portion of the housing assistance payment which exceeds the amount of rent to owner.

Utility hook-up charge. In a manufactured home space rental: Costs payable by a family for connecting the manufactured home to utilities such as water, gas, electrical and sewer lines.

Vacancy Loss Payments. (*Applies only to pre-10/2/95 HAP Contracts in the Rental Certificate Program*). When a family vacates its unit in violation of its lease, the owner is eligible for 80% of the contract rent for a vacancy period of up to one additional month, (beyond the month in which the vacancy occurred) if s/he notifies the PHA as soon as s/he learns of the vacancy, makes an effort to advertise the unit, and does not reject any eligible applicant except for good cause.

Very Low Income Family. A low-income family whose annual income does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50% of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the housing choice voucher program.

Violent criminal activity. Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

Voucher *(Housing Choice Voucher).* A document issued by a PHA to a family selected for admission to the housing choice voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

Voucher holder. A family holding a voucher with an unexpired term (search time).

Voucher program. The housing choice voucher program.

Waiting list admission. An admission from the PHA waiting list.

Welfare assistance. Income assistance from Federal or State welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, child care or other services for working families. FOR THE FSS PROGRAM (984.103(b)), “welfare assistance” includes only cash maintenance payments from Federal or State programs designed to meet a family’s ongoing basic needs, but does not include food stamps, emergency rental and utilities assistance, SSI, SSDI, or Social Security.

Welfare-to-work (WTW) family. A family assisted by a PHA with Voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).