

# **HOUSING AUTHORITY OF FRESNO COUNTY**

## **LOW INCOME PUBLIC HOUSING PROGRAM**

### **ADMISSION AND CONTINUED OCCUPANCY POLICY**

FYB: JANUARY 1, ~~2022~~2023

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# CHAPTER 1 – STATEMENT OF POLICIES AND OBJECTIVES

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## INTRODUCTION

The Housing Authority of the County of Fresno (herein referred to as FH) is a public entity that is responsible-serves as the provider of for public and affordable housing stock located throughout Fresno County. FH is not a federal department or agency. FH is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families.

To administer the public housing program, FH enters into an Annual Contributions Contract (ACC) with HUD to administer the public housing program. FH must ensure compliance with federal laws, state law, 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 FH and its programs with emphasis on the public housing program. It also contains information about the purpose, intent and use of the plan.

In administering the program, FH is committed to maintaining compliance with the following:

- The regulations which govern the Public Housing program which are located in the Code of Federal Regulations at 24 CFR Part 960;
- Executive Order 11063 – Equal Opportunity Housing
- The Fair Housing Act, 42 U.S.C. 3610-3619; (c2)
- Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d;
- The Age Discrimination Act of 1975, 42 U.S.C. 6101-6107;
- Section 504 of the Rehabilitation Act of 1973; 28 CFR Part 42;
- Title II of the American with Disabilities Act, 42 U.S.C. 12101; and
- Title IX of the Education Amendments of 1972, as amended 20 U.S.C 1681
- FH is committed in maintaining compliance with state laws-federally-protected classes of race, color, sex, religion, familial status, age, disability, or national origins, as well as additional protections afforded under the regulations with regard to laws that prohibit housing discrimination based on gender identity, actual or perceived sexual orientation, gender identity, and/or gender expression gender identity, and/or marital status.
- In addition, FH is committed to maintaining compliance with state laws that prohibit housing discrimination based on military status, source of income, ancestry, and/or gender expression.

There are three parts to this chapter:

Part I: The Public Housing Agency (PHA). This part includes a description of the PHA, its jurisdiction, its programs, and its mission and intent.

Part II: The Public Housing Program. This part contains information about public housing operations, roles and responsibilities, and partnerships.

Part III: The Admissions and Continued Occupancy (ACOP). This part discusses the purpose and organization of the plan and its revision requirements.

## **Part I: The PHA**

### **1.0 HOUSING AUTHORITY OVERVIEW & MISSION**

The public housing program is funded by the federal government and administered by the Housing Authority of the City of Fresno and the Housing Authority of Fresno County for the jurisdiction in the City of Fresno and throughout Fresno County.

The vision of FH is an engaged county, where all residents have access to quality housing that contributes to vibrant communities, and where all residents are empowered to achieve their educational and economic goals. Our mission is to create and sustain vibrant communities throughout Fresno County.

The Housing Authority of the City of Fresno and the Housing Authority of Fresno County are separate entities, functioning as separate public agencies with separate governing bodies. Through a unique arrangement, the two Housing Authorities share a single Executive Director and staff, thus making it possible to draw on a more comprehensive staff while realizing the cost advantages that result from avoiding duplication, ordering in larger quantities, and sharing equipment and services. Both Housing Authorities are public housing agencies as defined in the United States Housing Act of 1937, as amended, and in 24 C.F.R. Chapter VIII. Both agencies have been organized under Section 31000, et seq., of the California Health and Safety Code.

The Housing Authority of the City of Fresno and the Housing Authority of Fresno County are each governed by a seven-member Board of Commissioners. The City Board is appointed by the Mayor. Five of the seven commissioners are appointed to four-year, staggered terms. The other two members are appointed to two-year terms from among both the Housing Choice Voucher and Public Housing programs. County Board of Commissioners is structured in the same manner, except that the County Commissioners are appointed by the Board of Supervisors.

### **1.1 ORGANIZATION AND STRUCTURE OF FH**

The administration of the public housing program and the functions and responsibilities of FH shall be in compliance with the Annual Contributions Contract (ACC), and this Admissions and Continued Occupancy Policy (herein referred as ACOP). The administration of FH's housing program will also meet the requirements set forth by the U.S. Department of Housing and Urban Development (HUD). Such requirements include any Public Housing Regulations, Handbooks, and applicable Notices. All applicable Federal, State and local laws, including Fair Housing Laws and regulations also apply. Changes in applicable federal laws or regulations shall supersede provisions in conflict with this policy. Federal regulations shall include those found in Volume 24 Code of Federal Regulations (CFR), Parts V, VII and IX.

## **1.2 LOCAL OBJECTIVES**

The ACOP demonstrates that FH manages its program in a manner that reflects its commitment to improving the quality of housing available to the public, and its capacity to manage that housing in a manner that demonstrates its responsibility to the public trust. In addition, the ACOP is designed to achieve the following objectives:

- To provide improved living conditions for very low, and low-income families, with their help and cooperation, while maintaining their rent payments at an affordable level.
- To operate a public housing authority that provides decent, safe, and sanitary housing within a suitable living environment for residents and their families, with their help and cooperation.
- To provide opportunities for upward mobility for families who desire to achieve self-sufficiency.

## **1.3 PURPOSE OF THE POLICY**

The purpose of the ACOP is to establish guidelines for FH staff to follow in determining eligibility for admission and continued occupancy. These guidelines are governed by the requirements set forth by HUD with latitude for local policies and procedures. These policies and procedures for admissions and continued occupancy are binding upon applicants, residents, and FH.

## **1.4 UPDATING AND REVISING THE POLICY**

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

The FH Board of Commissioners must approve the original policy and any changes. Required portions of the ACOP will be provided to HUD.

## **1.5 FAMILY OUTREACH**

FH will publicize and disseminate information to make known the availability of housing units and housing-related services for very low-income families on a regular basis.

FH will communicate the status of housing availability to other service providers in the community. FH will advise them of housing eligibility factors and guidelines in order that they can make proper referrals for those who seek housing.

## **1.6 POSTING OF REQUIRED INFORMATION**

FH will maintain a bulletin board and/or binder in a conspicuous area of the management offices, which will contain HUD, state or other federal required documents including, but not limited to:

- Current schedule of routine maintenance charges
- A Fair Housing Poster
- An Equal Opportunity Employment and Housing poster
- Current Resident Notices
- Required public notices
- Utility Allowance Survey Results
- VAWA Policy
- Admissions and Continued Occupancy Policy (ACOP)
- Language Line Postings
- Resident Lease Agreement
- California Proposition 65 Posting

## **1.7 CONFIDENTIALITY**

It is the policy of FH to comply fully with all Federal, State, and local laws and with rules and regulations governing Confidentiality in housing. Each FH staff signs a “Confidentiality Agreement” at the commencement of their employment and participates in an annual Confidentiality training. Each FH staff agrees not to disclose any applicant/resident information, directly or indirectly, that is of a personal, private, and confidential nature, to any person or use such information in any way, either during the term of their employment or at any other time thereafter, except as follows:

- To an officer, employee, or authorized representative of FH who has a job related need to have access to the information in connection with admission of applicants, eviction of residents, or termination of assistance;
- If the resident/applicant (or resident’s/applicant’s parent/guardian, if resident is a minor) consents in writing;
- If disclosure is allowed by Court Order;
- If disclosure is made to medical personnel in a medical emergency;
- To the duly appointed guardian or conservator of the individual;
- To a law enforcement or regulatory agency, if the use of the information requested is in an investigation of unlawful activity under the jurisdiction of the requesting agency or for Licensing, certification, or regulatory purposes by that agency;
- To any person pursuant to a subpoena, court order, or other compulsory legal

process if, before the disclosure, FH reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law;

- Disclosure of any information about suspected child or elder abuse and/or neglect reported to appropriate state local authorities pursuant to state law.
- To share resident information that is necessary to determine eligibility for County welfare department programs or services for which the client has applied or is receiving, as authorized by the State of California Health and Safety Code, section 34217.

By signing the “*Confidentiality Agreement*”, FH staff agrees that all files, records, documents and similar items relating to their employment, whomever prepared by, are and shall remain exclusively the property of FH and that said files shall be removed from the premises only with the express prior written consent of the Executive Director or his/her designee. A violation of the “*Confidentiality Agreement*” may result in disciplinary action up to and including termination of employment. The unauthorized release of information may subject FH and FH staff to civil action under the Quality Housing and Work Responsibility Act of 1998.

## **1.8 VIOLENCE AGAINST WOMEN ACT**

FH's policy will comply with the Violence against Women Reauthorization Act of 2013 (VAWA). FH shall not discriminate against an applicant, or public housing resident on the basis of the rights or privileges provided under the VAWA.

FH will provide applicants and residents with notification of their protection and rights under VAWA as required by HUD. FH may enclose in each application packet information regarding applicant's rights and responsibilities under VAWA. The form HUD-5380 Notice of Occupancy Rights under Violence Against Women Act (VAWA form HUD-5380) and form HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (VAWA form HUD- 5382) will be included with every notice of denial to applicant and with every notice of termination of assistance or 30-day termination of tenancy to resident(s).

## **1.9 VAWA CONFIDENTIALITY**

All VAWA information provided to FH, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, regardless of sex, gender identity, or sexual orientation, shall be retained in confidence, and will not be entered into any shared database or provided to any related entity, except to the extent that disclosure is:

- Requested or consented to by the individual in writing;
- Required for use in an eviction proceeding under subsection (1)(5) or (6) of Public Law 109-162 referencing amendments made to Section 6 of the United States Housing Act of 1937 (42 U.S.C. 1437d);

- Otherwise required by applicable law.

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## CHAPTER 2 – FAIR HOUSING & EQUAL OPPORTUNITY

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### INTRODUCTION

This chapter explains the laws and HUD regulations requiring FH 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 FH's public housing operations.

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

**Part I: Nondiscrimination.** This part presents the body of laws and regulations governing the responsibilities of FH 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 FH to ensure meaningful access to the public housing program and its activities by persons with limited English proficiency (LEP). This part incorporates the Final Guidance to Federal Financial Assistance Recipients regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons published January 22, 2007 in the *Federal Register*

### PART I: NONDISCRIMINATION

#### 2.0 OVERVIEW

Federal laws require PHAs to treat all applicants and resident families 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. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. It is the policy of FH to 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. FH will comply with all laws relating to Civil Rights, 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)
- The Equal Access to Housing in HUD Programs regardless of Sexual Orientation or Gender Identity Final Rule, published in the Federal Register February 3, 2012 and further clarified in Notice PIH 2014-20.
- The Violence Against Women Reauthorized Act of 2013 (VAWA)
- Any applicable State laws or local ordinances and any legislation protecting individual rights of residents, 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.

## **2.1 NONDISCRIMINATION**

FH shall not discriminate on the basis of race, color, sex, religion, familial status, disability, national origin, marital status, gender identity, or sexual orientation in the leasing, rental, or other disposition of housing or related facilities, including land, that is part of any development or developments under FH jurisdiction covered by a contract for annual contributions under the United States Housing Act of 1937, as amended, or in the use or occupancy, thereof.

Posters and housing information are displayed in locations throughout FH site management offices and the central office in such a manner as to be easily readable from a wheelchair.

FH's facilities are accessible to persons with disabilities. Accessibility for the hearing impaired is provided by the TDD telephone service provider.

FH shall not, on account of race, color, sex, religion, familial status, disability, national origin, marital status, gender identity, or sexual orientation:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to lease housing suitable to its needs;
- Provide housing that is different from that provided to others;
- Subject a person to segregation or disparate treatment;
- Subject anyone to sexual harassment
- Restrict a person'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 resident toward or away from a particular area based on any of these factors;
- Deny a person 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; or
- 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.

FH shall not automatically deny admission to a particular group or category of otherwise qualified applicants (e.g., families with children born to unmarried parents, elderly families with pets).

#### Providing Information to Families

FH must take steps to ensure that families are fully aware of all applicable civil rights laws. As part of the public housing orientation process, FH will provide information to public housing applicant families about civil rights requirements. (Fair Housing pamphlet)

## 2.2 DISCRIMINATION COMPLAINTS

In all cases, FH may advise the family to file a fair housing complaint if the family feels they have been discriminated against under the Fair Housing Act.

Upon receipt of housing discrimination complaint, FH is required to:

- Provide written notice of the complaint to those alleged and inform the complainant that such notice was made.
- Investigate the allegations and provide the complainant and those alleged with findings and either a proposed corrective action or an explanation of why corrective actions is not warranted.
- Keep records of all complaint, investigations, notices, and corrective actions [Notice PIH 2014-20]

If an applicant or resident family believes that any family member has been discriminated against by FH, the family should advise FH. FH should make every reasonable attempt to determine whether the applicant's or resident family's assertions have merit and take any warranted corrective action.

- Applicants or resident families who believe that they have been subject to unlawful discrimination may notify FH either orally or in writing.
- FH will attempt to remedy discrimination complaints made against FH.

FH will provide a copy of a discrimination complaint form to the complainant and provide them with information on how to complete and submit the form to HUD's Office of Fair Housing and Equal Opportunity (FHEO). FH will keep record of all complaints, investigations, notices, and corrective actions. (See Chapter 16.)

## **PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES**

### **2.3 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 program.

FH must ensure that persons with disabilities have full access to FH programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the public housing program [24 CFR 8].

FH must provide a notice to each resident that the resident may, at any time during the tenancy, request reasonable accommodation for a person with a disability of a household member, including reasonable accommodation so that the resident can meet lease requirements or other requirements of tenancy. [24 CFR 966.7(b)].

FH policies and practices will be designed to provide assurances that all persons with disabilities will be provided reasonable accommodation so that they may fully access and utilize the housing program and related services. All requests for a reasonable accommodation will be verified so that FH can properly accommodate the need presented by the disability.

This policy is applicable to all situations described in the ACOP when a family initiates contact with FH, when FH initiates contact with a family including when a family applies, and when FH schedules or reschedules appointments of any kind.

FH will ask all applicants and resident families if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by FH, 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 housing authority."*

An applicant or resident can contact the local property management office for request for

accommodation for person with disabilities.

## **2.4 DEFINITION OF REASONABLE ACCOMMODATION**

A “reasonable accommodation” is a change, exception, or adjustment to a policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Exhibit 2-1 Definition of Person with a Disability under Federal Civil Rights Laws (24 CFR Parts 8.3 and 100.201, is located at the end of this ACOP under “Exhibits”. Since policies and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for FH, 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.

## **2.5 TYPES OF REASONABLE ACCOMMODATIONS**

When it is reasonable (see definition above Section 2.4), FH shall accommodate the needs of a person with disabilities. Examples include but are not limited to:

- Permitting applications and reexaminations to be completed by mail
- Providing “large-print” forms
- Conducting home visits
- Permitting a higher utility allowance for the unit if a person with disabilities requires the use of specialized equipment related to the disability or person(s) requiring special medical equipment as a result of Individual Relief of Utility Allowance Request
- Modifying or altering a unit or physical system if such a modification or alteration is necessary to provide equal access to a person with a disability
- Installing a ramp into a dwelling or building
- Installing grab bars in a bathroom
- Installing visual fire alarms for hearing impaired persons
- Allowing a FH-approved live-in aide to reside in the unit if that person is determined to be essential to the care of a person with disabilities, is not obligated for the support of the person with disabilities, and would not be otherwise living in the unit.
- Providing a designated handicapped-accessible parking space
- Allowing an assistance or service animal
- Permitting an authorized designee or advocate to participate in the

application or certification process and any other meetings with FH staff

- Displaying posters and other housing information in locations throughout the FH office in such a manner as to be easily readable from a wheelchair

## **2.6 REQUESTS 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. FH will treat the information as a request for a reasonable accommodation, even if no formal request is made as required by HUD. [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

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

If the need for the accommodation is not readily apparent or known to FH, the family must explain the relationship between the requested accommodation and the disability.

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

## **2.7 VERIFICATION OF A REQUEST FOR A REASONABLE ACCOMMODATION**

A request for an accommodation can be made at any time.

Any resident that requests an accommodation will be given a packet that contains the following:

Form 1: Notice of the Right to Reasonable Accommodation

Form 2: Request for a Reasonable Accommodation

Form 3: Verification of Need for Reasonable Accommodation

Accommodation should be in writing. However, FH will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted.

All residents that request a reasonable accommodation should submit Forms 2 and 3 to the management office.

The process for obtaining the proper verification (when applicable) is explained in the Public Housing, Section 8, and Reasonable Accommodation brochure.

The management office has a Reasonable Accommodation binder that includes the Reasonable Accommodation Log and all supporting documentation.

Housing Management staff will forward the reasonable accommodation request to the ADA Coordinator at FH administrative office for processing.

The ADA Coordinator will evaluate the request and consult with the designated staff before

rendering a decision. Except in cases involving an imminent emergency, decisions on a request for reasonable accommodation or modification shall be made by the ADA Coordinator as soon as practicable but in no event later than 10 business days after the request form(s) are completed. When additional information or verification(s) are requested by the ADA, FH may take up to 30 business days to make a decision.

The Reasonable Accommodation Request form will include an approval or a denial of the request. If denied, the form will include reasons for denial and possible alternative accommodations. Copies of the Decision on Reasonable Accommodation Request will be sent to the housing development site to be placed in the Reasonable Accommodation binder.

## **2.8 Verification of Disability**

The regulatory civil rights definition for persons with disabilities is provided in Exhibit 3-1 at the end of this policy. 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 interest list preferences and income allowances.

Before providing an accommodation, FH 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 FH's programs and services.

If a person's disability is obvious or otherwise known to the FH, 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 FH, FH 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, FH 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].
- FH must request only information that is necessary to evaluate the disability-related need for the accommodation. FH may not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.

In the event that FH does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, FH will dispose of it. In

place of the information, FH will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

## **2.9 APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION**

After a request for an accommodation is presented, FH will respond, in writing, within 10 business days. If FH denies a request for an accommodation because there is no relationship, or nexus, found between the disability and the requested accommodation, the notice will inform the family of the right to appeal FH's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).

If FH 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), FH 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 FH believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, FH will notify the family, in writing, of its determination within 10 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 FH's decision through an informal hearing (if applicable) or the grievance process.

## **2.10 PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS**

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

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

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

To meet the needs of persons with vision impairments, large-print versions and/or audio versions of key program documents will be made available upon request. When visual aids are used in public meetings or presentations, or in meetings with FH 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.

## **2.11 PHYSICAL ACCESSIBILITY**

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

- Notice PIH 2010-26
- 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

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

- This policy, the Admissions and Continued Occupancy Policy, describes the key policies that govern FH's responsibilities with regard to physical accessibility.
- Notice PIH 2010-26 summarizes information about pertinent laws and implementing regulations related to nondiscrimination and accessibility in federally funded housing programs.
- FH Plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of FH facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Notice PIH 2010-26 contains specific information on calculating the percentages of units for meeting UFAS requirements.

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 public housing program.

## **2.12 DENIAL OR TERMINATION OF ASSISTANCE**

FH'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 966.7].

When applicants with disabilities are denied assistance, the notice of denial must inform them of their right to request an informal hearing [24 CFR 960.208(a)].

When a family's lease is terminated, the notice of termination must inform the family of their right to request a hearing in accordance with FH's grievance process [24 CFR 966.4(l) (3) (ii)].

When denying assistance, FH will provide the applicant with VAWA form HUD-5380 and VAWA form HUD- 5382.

When reviewing reasonable accommodation requests, FH must consider whether reasonable accommodation will allow the family to overcome the problem that led to FH's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, FH must make the accommodation [24 CFR 966.7].

In addition, FH must provide reasonable accommodation for persons with disabilities to participate in the hearing process [24 CFR 966.56(h)].

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

#### **2.13 LIMITED ENGLISH PROFICIENCY (LEP) TRANSLATION SERVICES**

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 provided by the public housing 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 Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007, in the *Federal Register*.

FH will take affirmative steps to communicate with people who need services or information in a language other than English. These will be referred to as Persons with Limited English Proficiency (LEP). LEP is 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 ACOP, LEP persons are public housing applicants and resident families, and parents and family members of applicants and resident families.

FH is committed to providing meaningful access to the Authority's programs and services to all eligible persons, including those who have limited English proficiency because of their national origin. FH has analyzed its operations and the populations it serves and has developed a Language Assistance Plan (LAP), which is part of our Five-Year Plan/Annual Plan. The plan details the steps FH will take to provide meaningful access in connection with our programs and services to these populations. The two primary language assistance needs in the Fresno area are for persons speaking Spanish and Hmong.

#### **2.14 ORAL TRANSLATION**

FH may have multilingual staff to assist non-English speaking families in Spanish and Hmong and may orally translate documents into Spanish and Hmong. If multilingual staff is not available to interpret for these families, FH will use a telephone language interpretation service, which offers translation in over 100 languages, to communicate effectively with clients.

## **2.15 WRITTEN TRANSLATION**

In accordance with Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency (LEP)”, FH will determine whether it is feasible to provide translation of vital documents written in English into other languages FH will consider the following factors, as described in FH Language Assistance Plan (LAP) Exhibit 21.1:

- Number of applicants and participants in the jurisdiction who do not speak English and speak the other language.
- Estimated cost to FH per client of translation of English written documents into the other language.
- The availability of local organizations to provide translation services to non-English speaking families.

## **2.16 PRIVACY STATEMENT**

Applicants and residents, including all adults in their households, are required to sign the form HUD-9886, “Authorization for Release of Information and Privacy Act Notice.” This document incorporates the Federal Privacy Act Statement and describes the conditions under which HUD will release family information.

FH policy regarding release of information is in accordance with State and local laws, which may restrict the release of family information.

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## CHAPTER 3 – ELIGIBILITY AND SUITABILITY FOR ADMISSION TO PUBLIC HOUSING [24 CFR PART 960, SUBPART B]

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### INTRODUCTION

This chapter describes the definitions of family and household members, eligibility and suitability criteria for admission to the public housing program. The policy of FH is to apply these criteria to evaluate the qualifications of families who apply. FH will review all information provided by the family carefully and without regard to factors other than those defined in this chapter. Families will be provided the opportunity to explain their circumstances, to furnish additional information, if needed, and to receive an explanation of the basis for any decision made by FH pertaining to their eligibility and suitability. This chapter contains three parts:

**Part I: Definitions of Family and Household Members.** This part contains HUD and FH 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: Screening & Denial of Admission.** This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause FH to deny admission.

### 3.0 ELIGIBILITY & SUITABILITY CRITERIA FOR ADMISSION

In order to be deemed eligible for admission to public housing, an applicant must meet the following criteria:

- a. Meets the definition of a family as defined by HUD and FH
- b. Heads a household where at least one member of the household is either a citizen or eligible non-citizen. (24 CFR Part 5, Subpart E)
- c. Has an annual income at the time of admission that does not exceed the low-income limits for occupancy established by HUD and posted separately at FH
- d. Provides a Social Security number for all family members, or will provide written certification that they legally cannot obtain Social Security numbers at this time and will notify the FH upon receipt of a Social Security number
- e. Meets the Suitability Criteria as set forth in this chapter
- f. Has no outstanding debt to any housing authority
- g. Sign consent authorization documents for each adult in the household.
- h. FH must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or FH.

In addition to the above, in order for a family to be determined eligible FH will conduct criminal background checks using but not limited to FBI finger printing, DOJ Lifetime Sex Offender, and County and Statewide Criminal searches. A family may be denied assistance if the results show evidence which would prohibit admission to public housing.

### 3.1 TIMING FOR THE VERIFICATION OF QUALIFYING FACTORS

FH shall not verify eligibility factors until FH “draws” applicant files from the interest list after determining that a sufficient number of vacancies warrant a pool of eligible applicants.

## Part I: Definitions of Family and Household Members

### 3.2 FAMILY AND HOUSEHOLD [24 CFR 5.105 (a)(2), 24 CFR 5.403 FR 02/03/2012 and NOTICE PIH 2014-20]

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

1. A **family** includes but not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

Gender Identity means actual or perceived gender characteristics.

Sexual Orientation means homosexuality, heterosexuality, or bisexuality.

A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or

A group of persons residing together and such group includes, but is not limited to:

A family with or without children; (A child who is temporarily away from the home due to placement in foster care should be considered a member of the family); *Temporary absence away from the home is considered a member of the family, except family member currently in foster care. (Temporarily absent is when a family member is in foster care less than 18 months, provided such verification by foster facility is required. Family members who are in foster care longer than 18 months will be removed from the household and can be re-added back into the home once FH receives verification from the foster facility).*

An elderly family: which is defined as a family whose head, co-head, spouse, or sole member is at least 62 years of age; or two or more persons, each of whom are at least 62, living together; or one or more persons who are at least 62 living with one or more live-in aides.

A near elderly family: which means 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, who are 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.

A disabled family: which means a family whose head (including co-head),

spouse, or sole member is a person with a disability. It may include two or more persons with disabilities living together, or once or more persons with disabilities living with one or more live-in aides.

A displaced family: which means a family in which each member of the sole member is a person displaced by governmental action, or whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized by Federal disaster relief laws.

A remaining member of a resident family, meaning a family member of an assisted resident family who remains in the unit when other members of the family have left the unit.

Other families are defined by FH as follows:

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 a 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.

2. **Household** is a broader term that includes additional people who, with the FH's permission lives in a public housing unit, such as live-in aides, foster children, and foster adults.

### 3.3 FAMILY BREAK-UP AND REMAINING MEMBER OF RESIDENT FAMILY

#### 1. Family Break-up

When a family on the interest 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 interest list is open.

If a family breaks up into two otherwise eligible families while living in public housing, only one of the new families will continue to be assisted.

If a court determines the disposition of property between members of the applicant in a divorce or separation decree, FH will abide by the court's determination.

In the absence of a judicial decision or an agreement among the original family members, FH will determine which family retains their placement on the interest list by taking into consideration the following factors:

- (1) The interest of any minor household member, including custody arrangements;
- (2) The interest of any ill, elderly, or disabled family members;
- (3) The interest of any family member who is or has been the victim of domestic violence, dating violence, sexual assault or stalking, including a family member who was forced to leave a public housing unit as a result of such actual or threatened abuse and provides documentation in accordance with section 16.22

- (4) Any possible risks to family members as a result of domestic violence or criminal activity;
- (5) The recommendations of social service professionals.

## 2. Remaining Member of a Resident Family [24 CFR 5.403]

The HUD definition of family includes the *remaining member of a resident family*, which is a member of a resident family who remains in the unit when other members of the family have left the unit [PH OCC GB, p. 26]. 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 resident family” and there is no family member able to assume the responsibilities of the head of household—See chapter 6, Section 6.1, for the policy on “Caretakers for a Child.”

### 3.4 HEAD OF HOUSEHOLD

The “**head of household**” is the adult member of the household who is designated by the family as head, is wholly or partly responsible for paying the rent, and has the legal capacity to enter into a lease under State/local law.

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 spouse or co-head.

A minor who is emancipated under state law may be designated as head of household.

### 3.5 SPOUSE, COHEAD, AND OTHER ADULT

“**Spouse**” means the **marriage partner** of the head of household.

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 minor who is emancipated under state law may be designated as a spouse.

A **co-head** 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 co-head.

For proper application of the Noncitizens Rule, the definition of “spouse” is the marriage partner who, in order to dissolve the relationship, would have to be divorced. It includes the partner in a common-law marriage. The term “spouse” does not apply to boyfriends, girlfriends, significant others, or co-heads. Minors who are emancipated under state law may be designated as a co-head.

**Other adult** means a family member, other than the head, spouse, or co-head, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults [HUD-50058 IB, p. 14].

### 3.6 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, co-head, 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.

### 3.7 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. If there is a dispute about which family should claim them, FH 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.

### 3.8 FULL-TIME STUDENT [24 CFR 5.603]

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.

(1) Each family member that is an FTS, other than the head, spouse, or co-head, 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.

### 3.9 ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY

#### **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 50-61 years of age

#### **Near Elderly Family**

- Family who's 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 at least 50 who are living together; or
- One or more persons at least 50 living with one or more live-in aides.

Does not qualify as Elderly Household.

### **Elderly Family**

- An *elderly family* is one in which the head, spouse, co-head, or sole member is an elderly person. Identifying elderly families is important because these families qualify for the elderly family allowance and the medical allowance as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.
- Head, spouse or sole member is at least 62 years of age; or
- Two or more persons, each of whom is 62; or
- One or more persons at least 62, or living with one or more live-in aides

## **3.10 PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403, FR NOTICE 02/03/2012]**

### **Persons with Disabilities**

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

FH must make all aspects of the public housing 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 co-head is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income and may qualify for a particular type of development.

- Head, spouse or sole member is disabled; or
- Two or more persons with disabilities living together; or
- One or more with disabilities, or with one or more live-in aides.

If the Agency application uses co-head, then both need to be considered in determining the household qualified as a Disabled household.

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent FH from denying admission for reasons related to alcohol and drug abuse.

## **3.11 GUESTS [24 CFR 5.100]**

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

The lease provides that the resident 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 FH premises [24 CFR 966.4(f)].

The occupancy provisions of the Resident Lease Agreement allows for accommodation of Resident's guest, for a consecutive period not to exceed one (1) week each year without prior approval of management. Guests may be permitted in a Dwelling Unit as long as they have no previous history of behavior that would be a lease violation.

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.

Minor 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 public housing unit more than 50 percent of the time, are not subject to the time limitations of guests as described above.

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

Guests who represent the unit address as their residence address for receipt of benefits or other purposes will be considered unauthorized occupants. In addition, guests who remain in the unit beyond the allowable time limit will be considered unauthorized occupants, and their presence constitutes violation of the lease.

### 3.12 FOSTER CHILDREN AND FOSTER ADULTS

**Foster adults** are usually persons with disabilities, unrelated to the resident family, who are unable to live alone [24 CFR 5.609(c)(2)].

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. 13-14].

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.

Children that are temporarily absent from the home as a result of placement in foster care are discussed in Section 3.13.3.

### 3.13 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, and illness.

#### 1. Definitions of Temporarily and Permanently Absent

FH must compute all applicable income of every family member who is on the lease, including those who are temporarily absent.

Income of persons permanently absent will not be counted. If the spouse is

temporarily absent and in the military, all military pay and allowances (except hazard duty pay when exposed to hostile fire and any other exceptions to military pay HUD may define) is counted as income.

It is the responsibility of the head of household to report changes in family composition. FH will evaluate absences from the unit in accordance with this policy.

Generally, an individual who is or is expected to be absent from the public housing 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 public housing unit for more than 60 consecutive days is considered permanently absent and no longer a family member. (see Chapter 9 for Absence of Entire Family)

## **2. Absent of Any Member**

Any member of the household will be considered permanently absent and removed from the lease if s/he is away from the unit for 60 days in a 12 month-period except as otherwise provided in this chapter.

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

If the sole member is incarcerated for more than 60 consecutive days, s/he will be considered permanently absent. Any member of the household, other than the sole member will be considered permanently absent if s/he is incarcerated for 60 consecutive days. The rent and other charges must remain current during this period. However, depending on the seriousness of the offense and evidence of criminal activity the member will be prohibited readmission to the program.

## **3. Absences Due to Placement in Foster Care [24 CFR 5.403]**

If the family includes minor household member (s) temporarily absent from the home due to placement in foster care, FH will determine from the appropriate agency when the minor household member (s) will be returned to the home.

If the time period is to be greater than 18 months from the date of removal of the minor household member (s), the family will be required to move to a smaller size unit. If all minor household members are removed from the home permanently, the unit size will be reduced in accordance with FH's occupancy guidelines.

## **4. Absent Head, Spouse, or Co-head**

An employed head, spouse, or co-head absent from the unit more than 60 consecutive days due to employment will continue to be considered a family member.

If neither parent remains in the household refer to Chapter 9 section “Absence of Adult” for guidance.

## **5. Individuals Confined for Medical Reasons**

If any family member leaves the household to enter a facility such as hospital, nursing home, or rehabilitation center, FH will seek advice from a reliable qualified source as to the likelihood and timing of their return. If the verification indicates that the family member will be permanently confined to a nursing home, the family member will be considered permanently absent. If the verification indicates that the family member will return in less than 120 consecutive days, the family member will not be considered permanently absent, as long as rent and other charges remains current. A resident may request in writing to have a longer absence approved. FH has full discretion of approval, and will make determinations on a case by case basis.

If the person who is determined to be permanently absent is the sole member of the household, assistance will be terminated in accordance with FH’s “Absence of Entire Family” policy.

## **6. Return of Permanently Absent Family Members**

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

### **3.14 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].

FH 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(c) (5)]. 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 resident 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. FH will not require annual verification of need for live-in aide if the need is based on a permanent disability.

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.

FH has the discretion not to approve a particular person as a live-in aide, and may withdraw such approval, if [24 CFR 966.4(d)(3)(i)]:

- (1) The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- (2) The person has a history of drug-related criminal activity or violent criminal activity; or
- (3) The person currently owes rent or other amounts to FH or to another FH in connection with Section 8 or public housing assistance under the 1937 Act.
- (4) The person is subject to a lifetime registration requirement under the State Sex Offender Registration program.

Within 10 business days of receiving a request for a live-in aide, including all required documentation related to the request, FH will notify the family of its decision in writing.

## **PART II: BASIC ELIGIBILITY CRITERIA**

### **3.15 INCOME ELIGIBILITY AND TARGETING**

#### **Income Limits**

HUD is required by law to establish income limits that determine the income eligibility of applicants for HUD's assisted housing programs, including the public housing program. The income limits are published annually and are based on HUD estimates of the median incomes for families of different sizes in a particular area or county.

Income eligibility for the public housing program is based on the total anticipated income from all sources received by any family member 18 years of age or older. Income limits are determined by HUD and subject to periodic change. FH shall use income guidelines provided by HUD to determine program eligibility for the public housing program. These income guidelines will be posted at all times at FH's site management offices.

#### **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 the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

Area median income is determined by HUD, with adjustments for smaller and larger families. 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.

HUD also publishes over-income limits annually, but these are not used at admission. Over-income limits will be discussed in Chapter 13.

### **Using Income Limits for Eligibility [24 CFR 960.201]**

Income limits are used to determine eligibility 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 a *low-income* family.

To be income eligible, a family must not exceed the applicable income limit for a low-income family as established by HUD.

### **Using Income Limits for Targeting**

[24 CFR 960.202(b), Federal Register Vol. 79, No. 122/06-25-14]

#### **Targeting Requirement**

At least 40 percent of the families admitted to FH's public housing program during a FH fiscal year from FH waiting list must be *extremely low-income* families have incomes at a greater of the Federal poverty level or 30 percent of area median income, whichever number is higher [Federal Register notice 6/25/14] In addition the new ELI limits cannot exceed the Very Low-Income (VLI) limits; therefore, in some cases the ELI limits are identical to the VLI. This is called the "basic targeting requirement".

#### **Credit for admissions to PHA voucher program**

If admissions of extremely low-income families to FH's housing choice voucher program during a FH fiscal year exceed the 75 percent minimum targeting requirement for that program, such excess shall be credited against the FH's public housing basic targeting requirement for the same fiscal year.

The fiscal year credit for housing choice voucher program admissions that exceed the minimum voucher program targeting requirement must not exceed the lower of:

- Ten percent of public housing waiting list admissions during the FH fiscal year
- Ten percent of waiting list admission to the FH's housing choice voucher program during the FH fiscal year
- The number of qualifying low-income families who commence occupancy during the fiscal year of public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low-income family means a low-income family other than an extremely low-income family.

### 3.16 CITIZENSHIP/ELIGIBLE IMMIGRATION STATUS [24 CFR 5, SUBPART E]

In order to receive assistance, a family member must be a U.S. citizen, a citizen of the Freely Associated States of the Marshall Islands, the Federated States of Micronesia, and Palau, or an eligible immigrant. Individuals who are neither may elect not to contend their status. Eligible immigrants are persons who are in one of the six immigrant categories as specified by HUD.

For the Citizenship/Eligible Immigration requirement, the status of each member of the family is considered individually before the family's status is defined. [24 CFR 5.508]

**Mixed Families:** A family is eligible for assistance as long as at least one member is a citizen or eligible immigrant. Families that include eligible and ineligible individuals are called "mixed." Such applicant families will be given notice that their assistance will be prorated and that they may request a hearing if they contest this determination.

**Non-eligible members:** Applicant families that include only non-eligible members will be ineligible for assistance. Such families will be denied admission and offered an opportunity for a hearing.

**Non-citizen students:** As defined by HUD in the non-citizen regulations, non-citizen students are not eligible for assistance. [24 CFR 5.522]

#### **Time Frame for Determination of Citizenship Status: [24 CFR 5.508 (g)]**

For new occupants joining the resident family the FH 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, the FH 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. The FH will verify the status of applicants at the time other eligibility factors are determined.

The FH will establish and verify eligibility status of applicants at the time other eligibility factors are determined.

### 3.17 SOCIAL SECURITY NUMBERS [24 CFR 5.216 AND 5.218, NOTICE PIH 2018-24]

In accordance with 24 CFR 5.216, applicants and participants (including each member of the household) are required to disclose his/her assigned SSN, with the exception of the following individuals:

1. Those individuals who do not contend to have eligible immigration status (individuals who may be unlawfully present in the United States). These individuals in most instances would not be eligible for a SSN.

- (a) A family that consists of a single household member (including a pregnant individual) who does not have eligible immigration status is **not eligible** for

housing assistance and cannot be housed.

- (b) A family that consists of two or more household members **and at least one** household member that has eligible immigration status, is classified as a mixed family, and **is eligible** for prorated assistance in accordance with 24 CFR 5.520. The FH **will not** deny assistance to mixed families due to nondisclosure of an SSN by an individual who does not contend to have eligible immigration status.
2. Existing program participants as of January 31, 2010, who have previously disclosed their SSN and HUD has determined the SSN to be valid. The FH will confirm HUD's validation of the participant's SSN by viewing the household's ***Summary Report*** or the ***Identity Verification Report*** in the EIV system.
  3. Existing program participants as of January 31, 2010, who are 62 years of age or older, and had not previously disclosed a valid SSN. This exemption continues even if the individual moves to a new assisted unit.
  4. If a child under the age of six (6) has been added to an applicant family's household composition within the last six (6) months prior to program admission, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN with 90 days of admission.
  5. FH must deny assistance to an applicant family if they do not meet the SSN disclosure and documentation requirements contained in 24 CFR 5.216.

### 3.18 TIMEFRAME FOR PROVIDING SSN

#### **Applicants currently on or applying to the interest list:**

Applicants do not need to disclose or provide verification of a SSN for all non-exempt household members at the time of application and for placement on the interest list. However, applicants must disclose and provide verification of a SSN for all non-exempt household members at the time the applicant family is selected for the full application/intake process.

#### **Housing Applicants from the interest list:**

If all non-exempt household members have not disclosed and/or provided verification of their SSNs at the time a unit becomes available, the next eligible applicant must be offered the available unit.

The applicant who has not disclosed and/or provided verification of SSNs for all non-exempt household members has **60 days** from the date they are first offered an available unit to disclose and/or verify the SSNs. During this **60-day** period, the applicant may, at its discretion, retain its place on the waiting list. After the **60 days**, if the applicant is unable to disclose and/or verify the SSNs of all non-exempt household members, the applicant should be determined ineligible and removed from the interest list.

An individual who has never been issued a SSN card or who has lost their SSN card will be instructed to complete Form SS-5 *Application for Social Security Card* to request an original or replacement SSN Card, or change information on his/her SSA record.

**Resident**

All residents, except those individual age 62 or older as of January 31, 2010, and those individuals who do not contend eligible immigration status, must disclose and provide verification of their SSN at the time of their next interim or annual recertification if:

- They have not previously disclosed a SSN;
- Previously disclosed a SSN that HUD or the SSA determined was invalid; or
- Been issued a new SSN.

If a resident fails to provide a valid and verified SSN, the household is subject to terminate of tenancy in accordance with 24 CFR 5.218.

**SSN Not Previously Disclosed**

The head of household must bring SSN verification, through one or more of the Documents listed in Section 3.19, to the recertification meeting for any household member who has not disclosed and provided verification of their SSN.

**Invalid SSN Disclosed**

The Head of household must be notified when EIV pre-screening or the SSA validation determines that a household member has provided an invalid SSN. In such cases the FH will explain the reason for the rejection and request that acceptable documentation be provided within ten business days of the request date.

**Assignment of a New SSN**

If a resident or any member of a resident's household is or has been assigned a new SSN, the resident must provide the SSN and documentation to verify the SSN to the FH at:

- The time of receipt of the new SSN; or
- The next interim or regularly scheduled recertification; or
- Such earlier time as specified by the FH

**Adding a Household Member****(a) Age Six (6) or Older**

When a resident request to add a household member who is age six (6) or older, the documentation listed in Section 3.19 must be provided to the FH at the time of the request or at the time of the recertification that includes the new household member is processed. The FH must not add the new household member until such time as the documentation is provided.

**(b) Child Under the Age of Six (6)**

**With a SSN** – When adding a household member who is a child under the age of six (6) with a SSN, the child's SSN must be disclosed and verification provided at the time of processing the recertification of family composition that includes the new household member. If the family is unable to provide the required documentation of the SSN, the PHA shall not add the new household member to the family composition until the family provides such documentation. The PHA is not authorized to generate an ALT ID for the affected household member.

**Without a SSN** – if the child does not have a SSN, the FH will give the household 90 days in which to provide documentation of a SSN for the child. An additional 90-day period will be granted by the FH if the failure to provide documentation of a SSN is due to circumstances that are outside the control of the resident.

Examples include but are not limited to:

- Delayed processing of the SSN application by the SSA
- Natural disaster or fire
- Death in family, etc.

During this time period, the child is to be included as part of the household and will receive all of the benefits of the program in which the resident is involved, including the dependent deduction. A PIC-Alternate ID will be assigned to the child until the documentation of the SSN is required to be provided. At the time of the disclosure of the SSN, an interim recertification must be processed changing the child's Alternate ID to the child's verified SSN. If the SSN is not provided, the household is subject to penalties described in Penalties for a Resident's non-disclosure of SSN. FH must terminate the entire family's tenancy or assistance, or both.

### **3.19 ACCEPTABLE SSN DOCUMENTATION**

Most applicants and participants should be able to verify all SSNs with a Social Security Card. However, if the applicant/participant cannot produce the Social Security card for any or all non-exempt household members, other documents showing the household member's SSN may be used for verification. The applicant/participant may be required to provide one or more of the following alternative documents to verify his or her SSN.

- An original SSN card issued by the Social Security Administration (SSA) (Refer to PIH Notice 2010-3, Section 6 for a description of the three types of SS cards that SSA issues.)
- An original SSA-issued document with the individual's name and SSN
- An original document issued by a federal, state, or local government agency with the individual's name and SSN
- SSA benefit award letter
- Retirement benefit letter
- Life insurance policy
- Court records

#### **Verification**

FH will verify and document each disclosed SSN by:

- (a) Obtaining the documentation listed above for each member of the applicant/participant's household.
- (b) Make a copy of the original documentation submitted, returning the original to the individual and retaining the copy in the file folder;
- (c) Recording the SSN on line 3n of the form HUD-50058 and transmitting the data

to HUD in a timely manner. The FH will transmit the form HUD-50058 data within 30 calendar days, to HUD to initiate its computer matching efforts. *Note: not applicable to applicants.*

- (d) HUD, via its computer matching program with the SSA, will validate the SSN (along with the individual's name and date of birth) against the SSA's database.
- (e) EIV will report the status of the identity verification process as **Verified, Failed, Not Verified, or Deceased** on the household **Summary Report**.
- (i) **Verified.** If the information matches the SSA database, the individual's identity verification status will be **Verified**. No action is required by the FH.
- (ii) **Failed.** If the information does not match the SSA database, the identity verification status will be **Failed**. Informs the FH of any resident whose identity cannot be confirmed by the SSA due to incorrect personal identifiers (date of birth, surname, and/or SSN) recorded in section 3 of the form HUD-50058. Requires the FH to obtain appropriate documentation from the resident, update section 3 of the form HUD-50058, accordingly, and re-transmit a revised form HUD-50058 to PIC.
- (iii) **Not Verified.** If an individual's identity verification status is **Not Verified**, this means that HUD has not yet sent the resident's personal identifier to SSA for validation. No action is required by the FH.
- (iv) **Pending.** If an individual's identity verification status is Pending, this means that HUD has not yet sent the resident's personal identifiers to SSA for validation. No action is required by the PHA.
- (v) **Excluded.** Effective April 30, 2012 if an individual's identity verification status is Excluded, this means that HUD will not send the resident personal identifiers to SSA for validation because a valid SSN is not reported on line 3n of the form HUD-50058 or the individual has failed EIV pre-screening as described in section 22 of this notice.
- (vi) **Deceased.** If an individual's identity verification status is **Deceased**, this means the SSA's records indicate the person is deceased. The FH is to confirm the death with family's head of household or listed emergency contact person. If the individual is deceased and the only household member (single member of the household), the FH will complete an End of Participation (EOP) action of form HUD-50058, and discontinue assistance. If there are remaining household members, the FH will complete an Interim Recertification, updating the family composition accordingly.

### **Rejection of Documentation**

The FH will reject a document that:

- (a) Is not an original document; or
- (b) Is the original document but it has been altered, mutilated, or is not legible; or
- (c) Appears to be a forged document (e.g., does not appear to be authentic).

The applicant/participant will be notified of the reason(s) why the document(s) is not acceptable and request the applicant/participant obtain acceptable documentation of the SSN and submit it to the FH within ten business days of the request date.

**Actions Once SSN is verified**

Once the individual's SSN has been verified, designated staff will remove and destroy the copy of the documentation referenced 3.19 above by no later than the next recertification of family income or composition.

- (a) Paper documentation will be destroyed by shredding, pulverizing or burning.
- (b) Electronic documentation will be destroyed by erasing or permanently deleting the file.
- (c) The retention in the resident file or the Household Summary Report from the EIV system which will report the status of the identity verification process provides verification of the SSN.
- (d) Retaining this report in the resident file and destroying the copy of the SSN documentation will minimize the risk of exposing the individual's SSN.

**3.20 PENALTIES FOR A RESIDENT'S NON-DISCLOSURE OF SSN**

**Termination of Tenancy** – The FH must terminate the tenancy of a resident and the resident's household if the resident does not meet the SSN disclosure, documentation and verification requirements in the specified timeframe as the household is in non-compliance with its lease.

- (a) This termination of tenancy includes those households who have not disclosed and verified SSN for any child under the age of 6 who did not have a SSN when added to the household with the understanding that this SSN would be provided within 90 days after admission, or within the 90-day extension period, if applicable.
- (b) There is no proration of assistance for those household members who are required to obtain a SSN but who fail to disclose and verify their SSN.
- (c) Termination of tenancy does not apply to those household with individuals who do not contend eligible immigration status or who are age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010, based on the effective date of the form HUD-50058, unless there are other members of the household who have not disclosed or provided verification of their SSNs.

**Deferring Termination of Tenancy** – FH may defer termination of tenancy and provide the resident with an additional 90 days past their next regularly scheduled recertification of income and family composition to become compliant with the SSN disclosure and verification requirements.

- (a) The deferral is at FH's discretion and must only be provided if failure to meet the SSN requirements was due to circumstances outside the control of the resident and there is likelihood that the resident will be able to disclose and provide verification of the needed SSN(s) by the deadline date.

- (b) After this 90-day deferral, if the resident has not disclosed and provided verification of the needed SS(s) the FH must pursue termination of tenancy terminate the entire family tenancy or assistance, or both.

### **3.21 FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.230]**

HUD requires each adult family member, and the head of household, spouse, or co-head, 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.

The FH must deny admission to the program if any member of the applicant family fails to sign and submit consent forms which allow the FH to obtain information that the FH has determined is necessary in administration of the public housing program [24 CFR 960.259(a) and (b)].

## **PART III: SCREENING & DENIAL OF ADMISSION**

### **3.22 SCREENING FOR ADMISSION**

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

FH is required to screen for eviction and criminal activity as part of the rental assistance program. HUD requires FH to set screening standards to ensure that those persons who are prohibited from being admitted to public housing will not receive assistance. The FH's authority in this area is limited by the Violence against Women Reauthorization Act of 2013 (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been the victim of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender, identity, or sexual orientation [24 CFR 5.2005 (b)].

This part covers the following topics:

- Screening
- Required denial of admission
- Other permitted reasons for denial of admission
- Criteria for deciding to deny admission
- Prohibition against denial of admission to victims of domestic violence, dating violence, sexual assault, or stalking, regardless of sex, gender identity, or sexual orientation
- Notice of eligibility or denial

### **3.23 SCREENING STANDARDS**

The screening for eviction and criminal activity will occur after an applicant family has been selected from the interest list. All adults (age 18 and above), including emancipated minors in the applicant household, including live-in attendants, and all incoming family's members must go through the screening process.

#### **Criminal Background Checks**

The family will be required to disclose criminal/drug-related activity for all family members. All adult family members must submit a signed Criminal Background Consent form in order for the FH to obtain access to the Criminal Background records. [24 CFR 5.903]

FH will conduct criminal background checks using but not limited to FBI finger printing, DOJ Lifetime Sex Offender, and County and Statewide Criminal searches. A family may be denied assistance if the results show evidence which would prohibit admission to public housing.

If the FH proposes to deny admission based on a criminal record or on lifetime sex offender registration information, the FH must notify the household of the proposed action and must provide the subject of the record and the applicant 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)].

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

When conducting a background check the FH will obtain the following reports;

- Credit report
- Eviction report
- Criminal background report
- Lifetime sex offender registration report [24 CFR 960.204(a)(4)].

#### **Screening for Suitability [24 CFR 960.203(c)]**

All applicants will be processed in accordance with HUD's regulations (24 CFR Part 960) and sound management practices. Applicants will be required to demonstrate ability to comply with essential provisions of the lease as summarized below.

All applicants must demonstrate through an assessment of current and past behavior the ability:

- To pay rent and other charges as required by the lease in a timely manner;

- To care for and avoid damaging the unit and common areas;
- To use facilities, appliances and equipment in a reasonable way;
- To create no health or safety hazards, and to report maintenance needs in a timely manner;
- Not to interfere with the rights and peaceful enjoyment of others and to avoid damaging the property of others;
- Not to engage in criminal activity or alcohol abuse that threatens the health, safety or right to peaceful enjoyment of other residents or staff and not to engage in drug-related criminal activity on or off the FH premises;
- Not to have ever been convicted of manufacturing, producing, or distributing methamphetamine, also known as “speed,” on the premises of federally assisted housing;
- Not to be subject to sex offender lifetime registration under a State sex offender registration program. \*
- To comply with necessary and reasonable rules and program requirements of HUD and the FH;
- To comply with local health and safety codes.
- Not to have committed fraud, bribery, or any other corrupt or criminal act.
- Misrepresentation of income or other eligibility factors to an agency other than FH for example welfare fraud, is grounds for denial of assistance; and
- Non-compliance with any assistance programs and/or local law enforcement plus governmental agency may be denied assistance.

In developing its admission policies, the aim of FH is to attain a resident body composed of families with a broad range of incomes and to avoid concentrations of the most economically deprived families and families with serious social problems. Therefore, it is the policy of FH to deny admission to applicants whose habits and practices may reasonably be expected to have a detrimental effect on the operations of the development or neighborhood or on the quality of life for its residents.

FH will conduct a detailed interview of all applicants designed to evaluate the qualifications of applicants to meet the essential requirements of tenancy. Answers may be subject to third party verification.

An applicant's misrepresentation of any information related to eligibility, award of preference for admission, housing history, allowances, family composition, criminal history, or rent may result in denial of admission.

Applicants must be able to demonstrate the ability and willingness to comply with the terms

of the lease. Should the applicant require assistance in order to comply with the terms of the lease, the applicant must notify FH that the assistance will be available at the time of admission. (24 CFR 8.2 Definition: Qualified Individual with Disabilities) The availability of assistance is subject to verification by the FH.

The FH's minimum age for admission as head of household is 18, so that the FH will avoid entering into leases that would not be valid or enforceable under applicable law.\*

As a part of the final suitability determination, FH will screen each applicant household to assess their suitability as renters.

- FH may complete a credit check or rental history check on all applicants.
- FH may complete a home visit at the current residence of all applicants who:
- Have had landlords refuse to sign their Resident Reference Form;
- Stated information on their application that is inconsistent with information on the credit and unlawful detainer report;
- Do not have an established residence at the time of their suitability review (e.g., state they live "here and there with friends");
- Have landlords raise suitability issues on the Resident Reference Forms;
- Have a criminal history that raises suitability concerns;
- Claim to have zero income (to establish how they are meeting their needs);
- Were interviewed by FH staff who has found the applicant's statement or behavior to raise concerns regarding suitability.

#### **Resources Used to Check Applicant Suitability [PH OCC GB, pp. 47-56]**

FH's examination of relevant information pertaining to past and current habits or practices will include, but is not limited to, an assessment of:

- The applicant's past performance in meeting financial obligations, especially rent;
- Eviction or records of disturbance of neighbors sufficient to warrant a police call, destruction of property, or living or housekeeping habits at present or prior residences, which may adversely affect the health, safety, or welfare of other residents or neighbors;
- Any history of criminal activity on the part of any applicant family member, involving criminal acts, including drug-related criminal activity;
- Any history or evidence of repeated acts of violence on the part of an individual, or a

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\* FH shall make an exception for emancipated minors upon completion of verifying their legal status as such.

pattern of conduct constituting a danger to peaceful occupancy by neighbors;

- Any history of initiating threats or behaving in a manner that indicates intent to assault employees or other residents;
- Any history of alcohol or substance abuse that would threaten the health, welfare, or right to peaceful enjoyment of the premises by other residents.
- Is subject to a lifetime registration requirement under the State Sex Offender Registration Program.

The ability and willingness of an applicant to comply with the essential lease requirements will be verified and documented by FH. The information to be considered in the screening process shall be reasonably related to assessing the conduct of the applicant and other family members listed on the application in present and prior housing.

The history of applicant conduct and behavior must demonstrate that the applicant family can reasonably be expected not to:

- Interfere with other residents in such a manner as to diminish their peaceful enjoyment of the premises by adversely affecting their health, safety, or welfare [24CFR 960.205(b)]
- Adversely affect the physical environment or financial stability of the development [24CFR 960.205(b)];
- Violate the terms and conditions of the lease [24CFR 8.3];
- Require services from FH staff that would alter the fundamental nature of the FH's program [24 CFR 8.3].

### **3.24 SCREENING FOR DRUG-RELATED AND/OR CRIMINAL ACTIVITY [24 CFR 960.204]**

It is the intention of the FH to administer a policy that maintains decent, safe, and sanitary public housing. All screening procedures shall be administered fairly and in such a way as to not discriminate on the basis of race, color, sex, religion, familial status, disability, national origin, marital status, gender identity, or sexual orientation or against other legally protected groups as well as not in violation of the right to privacy.

FH will obtain criminal history information from State and/or local law enforcement agencies, and/or a national federal database on all applicants over the age of eighteen for the purpose of determining resident suitability.

All applicants to the public housing program will be screened for drug-related, violent- and other criminal activity during the suitability review process. FH defines criminal activity in the following manner:

**Drug-Related Criminal Activity:** the illegal manufacture, sale, distribution, 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:** any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against a person or property. [24 CFR 5.100] 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.

**Lifetime Registration:** any criminal activity that subjects a member of the applicant's household to be subject to sex offender lifetime registration under a State sex offender registration program.

**Other Criminal Activity:** any criminal activity including, but not limited to, violent criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the public housing premises by other residents, includes, but not limited to: [24 CFR 960.203 (c) (3)]

- Criminal activity that may threaten the health or safety of FH staff, contractors, subcontractors, or agents.
- Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse.

Evidence of such criminal activity includes, but is not limited to any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members within the past 3-5 years. A conviction for such activity will be given more weight than an arrest or an eviction.

### 3.25 MANDATORY DENIAL OF ASSISTANCE [24 CFR 960.204]

HUD regulations require mandatory denial of assistance for the following reasons:

- FH will deny admission to those applicants convicted of manufacturing or producing methamphetamine on the premises of Federally assisted housing, in accordance with HUD regulations.
- An applicant evicted from federally assisted housing by reason of drug-related criminal activity within a three year period shall be denied admission.
- FH will deny admission to applicants where it is determined that there is a *pattern* of illegal use of a controlled substance or abuse of alcohol by the applicant. The FH will consider the illegal use of a controlled substance or abuse of alcohol a “pattern” where there is more than three (3) incidents during the previous 24 months.
- Current illegal drug use for any household members – if FH determines that any household member is **currently engaged in** any illegal use of a drug and/or possession.
- In accordance with 24 CFR 960.204 (a) (4), FH will deny admission to public housing for any applicant who is subject to sex offender lifetime registration under a State lifetime sex offender registration program.

- FH will deny admission to public housing for any applicant who has engaged in violent criminal activity within the last five years, however, depending upon the seriousness of the crime committed the prohibition would be up to seven years from the date of the offense.

HUD and the FH have defined the following clarifiers:

- **“Drug”** means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].
- **“Pattern of abuse”** is defined as the use and/or possession of a controlled substance or alcohol if there is more than three (3) incident during the previous 24 months.
- **“Incident”** includes but is not limited to arrest, convictions, no contest pleas, fines and city ordinance violations.
- **“Currently engaged in”** as any use or possession of illegal drugs during the previous twelve months.
- **“Abusive or violent behavior”** includes verbal as well as physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language (written or oral) that is customarily used to insult or intimidate, may be cause for denial of admission.
- **“Threatened”** refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In determining reasonable cause, FH will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. FH will also consider evidence from treatment providers or community-based organizations providing services to household members.

### 3.26 ADDITIONAL PROHIBITIONS [960.203(C) AND (D) AND PH OCC GB, P. 48]

FH may at any time deny program assistance for any of the following reasons:

- Financial Obligations - has a pattern of unsuitable past performance in meeting financial obligations, including rent within the past three years.
- Disturbances - has a pattern of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences within the past three years which may adversely affect the health, safety, or welfare of other residents.
- Past Termination from a FH Program: If FH has ever terminated assistance under the program for any member of the family; has a pattern of eviction from housing or termination from residential programs within the past three years (considering relevant circumstances).

- Outstanding Debt: If the family currently owes rent or other amounts to FH or to another FH in connection with Section 8 or public housing assistance under the 1937 Act;
- Fraud, Bribery, or Other Corrupt or Criminal Act Within a Federal Housing Program: If any family member has committed such acts in connection with a Federal housing program.
- Actual or Threatened Abusive or Violent Behavior Toward FH Personnel: If the family has engaged in or threatened abusive or violent behavior toward FH personnel.
- Repayment Breach with a FH: If the family breaches an agreement owed to a FH.
- Fraud Against Another Agency: Misrepresentation of income or other eligibility factors to an agency other than the FH, for example welfare fraud, is grounds for denial of assistance.
- Non-compliance: With any assistance programs, governmental agency and/or law enforcement.
- An applicant's misrepresentation: Of any information related to eligibility, preferences, housing history, allowances, family composition, and/or criminal history.
- Engaged in or threatened violent or abusive behavior toward FH personnel:  
*Abusive or violent behavior towards FH personnel* includes verbal abuse 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.
- Actual physical abuse or violence will always be cause for denial of admission.

FH Policy - FH may prohibit admission of a household to the program if FH determines that any household member has a history of any of the following prior to admission:

- a. Drug-related criminal activity; up to three years from the date of the offense.
- b. Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; up to three years from the date of the offense.
- c. Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the FH (including a FH employee or a FH contractor, subcontractor or agent); up to three years from the date of the offense.
- d. Violent criminal activity; up to five to seven years from the date of the offense, depending upon the seriousness of the offense
- e. Convicted of any felony; up to three years from the date of the offense.

- f. Is subject to a lifetime registration requirement under the State Sex Offender Registration Program.

A conviction for drug-related or violent criminal activity will be given more weight than an arrest for such activity,

Although an arrest record cannot solely be used for denying or terminating program assistance, an arrest record can trigger an inquiry into whether there is sufficient evidence for the FH to determine that a person engaged in disqualifying criminal activity, but is not itself evidence on which to base a determination. FH will utilize other evidence, such as police reports detailing the circumstances of the arrest, witness statements, and other relevant documentation to assist them in making a determination that disqualifying conduct occurred. Reliable evidence of a conviction for criminal conduct that would disqualify an individual for tenancy may also be the basis for determining that the disqualifying conduct is fact occurred [PIH 2015-19]

### **3.27 OTHER SUITABILITY FACTORS**

#### **Rent-Paying Habits**

FH will examine any FH records from a prior tenancy, and will request written references from the applicant's current landlord and may request written references from current and former landlords for up to the past three years.

Based upon these verifications, FH will determine if the applicant was chronically late with rent payments, has been evicted for nonpayment of rent, or had other legal action initiated against him/her for debts owed. Any of these circumstances could be grounds for an ineligibility determination, depending on the amount of control the applicant had over the situation.

#### **Mitigating Circumstances - Obtaining Information from Drug Treatment Facilities** **[24 CFR 960.205]**

In determining whether to deny admission to public housing based on a pattern of illegal use of a controlled substance or abuse of alcohol by an applicant, and/or prior eviction from federally assisted housing by reason of drug-related criminal activity, FH may consider the following mitigating factors:

1. Has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is willing to continue with counseling and support activities and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable);
2. Has otherwise been rehabilitated successfully and is willing to continue with counseling and support activities and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable); or
3. Is participating in a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable).

Mitigating circumstances are facts relating to the applicant's record of unsuitable history or behavior, which, when verified, would indicate both:

1. What the reason for the unsuitable history and/or behavior is; and
2. That the reason for the unsuitable history and behavior is no longer in effect or is under control, and the applicant's prospect for lease compliance is an acceptable one, justifying admission.

If unfavorable information is received about an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct and to factors that might indicate a reasonable probability of favorable future conduct. In order to be factored into the FH's screening assessment of the applicant, mitigating circumstances must be verifiable.

If the mitigating circumstances claimed by the applicant relate to a change in disability, medical condition or course of treatment, FH shall have the right to refer such information to persons who are qualified and knowledgeable to evaluate the evidence and to verify the mitigating circumstance. FH shall also have the right to request further information reasonably needed to verify the mitigating circumstance, even if such information is of a medically confidential nature. Such inquiries will be limited to the information necessary to verify the mitigating circumstances or, in the case of a person with disabilities, to verify a reasonable accommodation.

Examples of mitigating circumstances:

- Evidence of successful rehabilitation;
- Evidence of the applicant family's participation in and completion of social service or other appropriate counseling service approved by the FH;
- Evidence of successful and sustained modification of previous disqualifying behavior.

Consideration of mitigating circumstances does not guarantee that the applicant will qualify for admission. FH will consider such circumstances in light of:

- The applicant's ability to substantiate through verification the claim of mitigating circumstances and his/her prospects for improved future behavior; and the applicant's overall performance with respect to all the screening requirements.

### **3.28 QUALIFIED AND UNQUALIFIED APPLICANTS**

Information which has been verified by FH will be analyzed and a determination will be made with respect to:

- The eligibility of the applicant as a family;
- The eligibility of the applicant with respect to income limits for admission; and
- The eligibility of the applicant with respect to citizenship or eligible immigration status.

Assistance to a family may not be delayed, denied or terminated on the basis of the family's ineligible immigration status unless and until the family completes all the verification and appeals processes to which they are entitled under both Department of Homeland Security (DHS) and FH procedures, except for a pending FH hearing.

Applicants who are determined to be unqualified for admission will be promptly notified with a Notice of Denial of Admission stating the reason for the denial. The FH shall provide applicants an opportunity for an informal hearing (see chapter titled "Complaints, Grievances, and Appeals").

FH will make every effort to accurately estimate an approximate date of occupancy. However, the date given by FH does not mean that applicants should expect to be housed by that date. The availability of a suitable unit to offer a family is contingent upon factors not directly controlled by FH, such as turnover rates, and market demands as they affect bedroom sizes and development location.

### **3.29 HOUSING ACCESS AND REENTRY PILOT PROGRAM**

Fresno Housing (FH) may consider adopting policies that allows individuals formerly incarcerated to live with their families in public housing, while receiving supportive services. An individual who would otherwise be ineligible for public housing assistance must have been referred to FH by a partnering agency and may be considered for housing based on adjusted policy criteria associated with the programs suitability standards.

Exceptions to the suitability standards would not be extended to the following HUD required denials [24 CFR 960.204] to the following individuals:

- Persons convicted of manufacturing or producing methamphetamine on the premises of federally assisted housing;
- Any person subject to a life time registration requirement under a state sex offender registration program;

### **3.30 DOCUMENTATION OF FINDINGS**

An authorized representative of FH shall document any pertinent information received relative to the following:

Criminal Activity—includes the activities listed in the definition of criminal activity in this chapter.

Pattern of Violent Behavior—includes evidence of repeated acts of violence on the part of an individual, or a pattern of conduct constituting a danger to peaceful occupancy of neighbors.

Pattern of Drug Use—includes a determination by FH that the applicant has exhibited a pattern of illegal use of a controlled substance which might interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

Drug-Related Criminal Activity—includes a determination by FH that the applicant has been involved in the illegal manufacture, sale, distribution, use or possession of a controlled substance.

Pattern of Alcohol Abuse—includes a determination by FH that the applicant's pattern of alcohol abuse might interfere with the health, safety or right to peaceful enjoyment of the premises by other residents.

Initiating Threats—or behaving in a manner indicating intent to assault employees or other residents.

Abandonment of a Public Housing Unit without advising FH officials so that staff may secure the unit and protect its property from vandalism.

Non-Payment of Rightful Obligations—including rent and/or utilities and other charges owed to the FH or any other FH.

Falsifying an Application for Leasing—providing false information about family income and size, is using an alias on the application for housing, or making any other material false statement or omission intended to mislead.

Record of Serious Disturbances of Neighbors, Destruction of Property or Other Disruptive or Dangerous Behavior—consists of patterns of behavior that endanger the life, safety, or welfare of other persons by physical violence, gross negligence or irresponsibility; that damage the equipment or premises in which the applicant resides; or that are seriously disturbing to neighbors or disrupt sound family and community life, indicating the applicant's inability to adapt to living in a multi-family setting. Includes judicial termination of tenancy in previous housing on the grounds of nuisance or objectionable conduct, or frequent loud parties that have resulted in serious disturbances of neighbors.

Grossly Unsanitary or Hazardous Housekeeping—includes the creation of a fire hazard through acts such as hoarding rags, papers, or other materials; severe damages to premises and equipment, if it is established that the family is responsible for the condition; seriously affecting neighbors by causing infestation, foul odors, depositing garbage in halls; or serious neglect of the premises. This category does not include families whose housekeeping is found to be superficially unclean or due to lack of orderliness, where such conditions do not create a problem for neighbors.

Destruction of Property from previous rentals.

Whether Applicant or Resident Is Capable of Maintaining the Responsibilities of Tenancy  
In the case of applicants for admission, the person's present living arrangements and a statement obtained from applicant's physician, social worker, or other health professional will be among factors considered in making this determination. The availability of a live-in attendant will be considered in making this determination.

In the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct and to factors that might indicate a reasonable probability of favorable future conduct or financial prospects.

### **3.31 PROHIBITED CRITERIA FOR DENIAL OF ADMISSION**

FH shall not reject an applicant on the basis of:

- Race, color, sex, religion, familial status, disability, national origin, marital status gender identity, or sexual orientation.

Or on the basis that the applicant:

- Has no income;
- Is not employed;
- Does not participate in a job-training program;
- Will not apply for various welfares or benefit programs;
- Has a child (or children);
- Has children born out of wedlock;
- Is on welfare;
- Is a student;
- Is or had been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant otherwise qualifies for assistance or admission, and that nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provide greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking.

### **3.32 GRIEVANCE RIGHTS WHEN FH DECISION IS TO DENY ADMISSION**

If FH obtains criminal record information from a State, local, or federal agency showing that a household member has been convicted of a crime relevant to applicant screening, FH will notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant or resident a copy of such information, and an opportunity to dispute the accuracy and the relevance of the information. This opportunity must be provided before a denial of admission on the basis of such information.

If denied as a result of the criminal background check, FH will send a written notification of the denial which will include:

- The reason for the denial,
- The right of an individual to review the evidence regarding his criminal background which was the basis of the denial,
- An explanation of the right to request an informal review, and
- A description of how to obtain the informal review.
- A copy of VAWA form HUD-5380 and VAWA form HUD-5382

The family will be given 10 business days from the date of the FH notice, to dispute the accuracy and relevance of the information. If the family does not contact the FH to dispute the information within the 10 business day period, the FH will proceed with the termination action.

### **3.33 RECORDS MANAGEMENT**

Consistent with the limitations on disclosure of records, FH has established and implemented a system of records management that ensures that any criminal record received by FH from a law enforcement agency is:

- a. Maintained confidentially;
- b. Not misused or improperly disseminated; and
- c. Destroyed, once the purpose(s) for which the record was requested has been accomplished, including expiration of the period for filing a challenge to FH action without institution of a challenge or final disposition of any such litigation.

All credit and/or eviction and criminal background history is retained by the contracted provider. FH will not print search results unless there is a need to due to an applicant's request for an Informal Review or as needed for review.

Credit and/or eviction reports will be kept in the applicant or participant file for three years.

A copy of the Criminal Background Consent form along with the approval/denial status will be kept in the applicant file.

### **3.34 CONSIDERATION OF CIRCUMSTANCES [24 CFR 960.203(C) (3) AND (D)]**

HUD authorizes the FH 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.

In deciding whether to deny assistance because of action or failure to act by members of the family; the FH has [24 CFR 982.552 (c) (2)]:

1. Discretion to consider all relevant circumstances in each case, including the seriousness of the case. FH will use its discretion in reviewing the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the passage of time since the family's action or failure to act.
2. When the ground for denial of assistance is related to criminal activity, such factors as disclosure of the criminal act, completion of rehabilitative treatment for drug-related offenses, and type and longevity since the conviction will be considered.
3. FH may also review the family's more recent history and record of compliance, and the effects of denial of admission on other family members who were not involved in the action or failure to act [24 CFR 982.552 (c) (2) (i)].

4. FH may impose a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit [24 CFR 960.203(c)(3)(i)]. FH may permit the other members of a family to be admitted to the program. If the violating member is a *minor*, the FH may consider individual circumstances with the advice of Juvenile Court officials. FH will also consider whether the culpable member is a victim of domestic violence, dating violence, sexual assault, or stalking.
5. In determining whether to deny admission for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the FH [24 CFR 982.552 (c) (2) (iii)]:
  - Will 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).
  - May require the family to submit evidence of the household member's current participation, or successful completion of a supervised drug or alcohol rehabilitation program.
- 6 *Reasonable Accommodation*: If the family includes a person with disabilities, the FH'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, the FH will determine whether the behavior is related to the disability. If so, upon the family's request, FH will determine whether alternative measures are appropriate as a reasonable accommodation. FH 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.

FH will also consider whether the family disclosed the information to the FH when completing the certification packet.

If an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, this is not an appropriate basis for denial of admission, if the applicant otherwise qualifies for admission.

**Removal of a Family Member's Name from the Application [24 CFR 960.203(c) (3) (i)]**  
**HUD** permits FH 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 public housing unit. After admission to the program, the family must present evidence of the former family member's current address upon FH request.

## **Required Evidence**

FH will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

*Preponderance of 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 show that the fact sought to be proved is more probable than not. The intent is not to prove criminal liability, but to establish that the act(s) occurred.

1. *Preponderance of evidence* will not be determined by the number of witnesses, but by the greater weight of all evidence.
2. *Credible evidence* may be obtained from police and/or court records. Testimony from neighbors, when combined with other factual evidence, can be considered credible evidence. Other credible evidence includes documentation of drug raids or arrest warrants.
3. FH will pursue fact-finding efforts as needed to obtain credible evidence.

### **3.35 PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING [24 CFR PART5, SUBPART L]**

The Violence against Women Reauthorization Act of 2013 (VAWA) and HUD regulation at 24 CFR 5.2005 (b) prohibits denial of admission to an otherwise qualified applicant on the basis or the direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking. Specifically, Section 607(2) of VAWA adds the following provision to Section 6 of the U.S. Housing Act of 1937, which lists contract provisions and requirements for the public housing program:

*Every contract for contributions shall provide that . . . the public housing agency shall not deny admission to the development to any applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant otherwise qualifies for assistance or admission, and that nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking.*

Definitions of key terms used in VAWA are provided in Section 16.5 of this ACOP, where general VAWA requirements and policies pertaining to notification, documentation, and confidentiality are also located.

- **Notification**

FH acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, poor rental history, a record of previous damage to an apartment, a prior arrest record) due to adverse factors that would warrant denial under the FH's policies. Therefore, if the FH makes a

determination to deny admission to an applicant family, FH will include in its notice of denial:

- (a) A statement of the protection against denial provided by VAWA
- (b) A description of FH confidentiality requirements
- (c) A request that an applicant wishing to claim this protection submit to the FH documentation meeting the specifications below with her or his request for an informal hearing.
- (d) A VAWA Notice of Occupancy Rights (VAWA form HUD-5380) and domestic violence certifications (VAWA form HUD-5382) at the time the applicant is denied.

- **Documentation**

***Victim Documentation [24 CFR 5.2007]***

An applicant claiming that the cause of an unfavorable history is that a member of the applicant family is or has been a victim of domestic violence, dating violence, sexual assault, or stalking must provide documentation:

- (1) Demonstrating the connection between the abuse and the unfavorable history;
- (2) Naming the perpetrator of the abuse, only if the name is known and safe to provide. The documentation may consist of any of the following:
  - (a) A statement signed by the victim certifying that the information provided is true and correct and that it describes bona fide incident(s) of actual or threatened domestic violence, dating violence, sexual assault, or stalking
  - (b) A police or court record documenting the domestic violence, dating violence, sexual assault, or stalking
  - (c) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical or other knowledgeable professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

***Perpetrator Documentation***

If the perpetrator of the abuse is a member of the applicant family, the applicant must provide additional documentation consisting of one of the following:

- (a) A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the public housing unit
- (b) Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. 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.

- **Time Frame for Submitting Documentation**

The applicant must submit the required documentation with her or his request for an informal hearing or must request an extension in writing at that time. If the applicant so requests, the FH will grant an extension of 10 business days and will postpone scheduling the applicant's informal hearing until after it has received the documentation or the extension period has elapsed. If, after reviewing the documentation provided by the applicant, the FH determines that the family is eligible for assistance, no informal hearing will be scheduled, and the FH will proceed with admission of the applicant family.

- **FH Confidentiality Requirements [24 CFR 5.2007(a)(1)(5)]**

All information provided to the FH regarding domestic violence, dating violence, sexual assault, 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 by applicable law, the FH will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

### **3.36 NOTICE OF ELIGIBILITY OR DENIAL**

The FH will notify an applicant family of its final determination of eligibility in accordance with the Section 4.22.

If, based on a criminal record or sex offender registration information an applicant family appears to be ineligible under 24 CFR 5, Subpart J, the FH will notify the family in writing of the proposed denial and provide a copy of the record to the applicant and to the subject of the record [24 CFR 5.903(f) and 5.905(d)].

The family will be given 10 business days to dispute the accuracy and relevance of the information. If the family does not contact FH to dispute the information within that 10-day period, FH will proceed with issuing the notice of denial of admission. A family 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 hearing process.

Notice requirements related to denying admission to noncitizens are contained in Section 3.28.

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, sexual assault, or stalking are contained in Section 3.35

VAWA 2013 requires that the FH inform an applicant of the protections against denial that VAWA provides when the FH sends a notice of denial.

Applicants may be denied due to factors that on the surface appear unrelated to domestic violence, dating violence, sexual assault, or stalking, but are in fact a direct result of the fact that the applicant was a victim. Adverse factors which would ordinarily be grounds for denial under FH policy such as poor credit history, poor rental history, a criminal record, or failure to pay rent may be tied to the applicant's status as a victim. While the FH is not required to independently identify whether a denial is a direct result of domestic violence, dating violence, sexual assault, or stalking, by informing all applicants of their rights under VAWA as part of the notice of denial, the applicant may be able to inform the FH of their status as a victim. If so, the applicant must provide enough information for the FH to make a determination regarding the adverse factor that is a direct result of their status as a victim. The FH may request additional supporting documentation in accordance with FH policies. The FH must make an objectively reasonable determination, based on all circumstances whether the adverse factors are a direct result of the applicant's status as a victim. If the denial is required by federal statute, such as the requirement to deny an applicant who is registered under a state lifetime sex offender registration requirement, the FH must comply with the statute, even if the adverse factor is a direct result of domestic violence, dating violence, sexual, assault or stalking.

The model policy considers adverse factors relating to an applicant's status as a victim and states the FH will make an objectively reasonable determination.

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## CHAPTER 4 – PRE-APPLICATIONS, MANAGEMENT OF THE INTEREST LIST AND RESIDENT SELECTION [24 CFR 5.400, 5.600, 960.201 THROUGH 960.208]

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### INTRODUCTION

The policy of FH is to ensure that all families who express an interest in housing assistance are given an equal opportunity to apply, and are treated in a fair and consistent manner. At the time the interest\* list is open, families wishing to participate in the low income public housing program must submit a pre-application providing all information requested by FH. This information allows FH to place each applicant on the interest list in accordance with the policies in this Admissions & Continued Occupancy Policy.

Random lottery draws will be used as the methodology to select applicants from the interest list to create the waiting list, as needed. A final draw/purge of the interest list may take place annually.

\*Interest list: A list of applicants wishing to participate in the random lottery/selection process.

This chapter will explain the policies for the interest list, initial pre-application intake process, management of the interest list, completion of the full application and resident selection. It describes how FH accepts the pre-applications, how FH maintains the interest list with accurate information, selecting families from the interest list, establishing and verifying preferences and selecting eligible applicants for a unit offer. Eligibility for program admission as well as grounds for denial of admissions is covered in Chapter 3.

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

**Part II: Managing the Interest List.** This part presents the policies that govern how FH's interest 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 FH will use to keep the interest list current.

**Part III: Resident Selection.** This part describes the policies that guide FH in selecting families from the interest list as units become available. It also specifies how in-person interviews will be used to ensure that FH has the information needed to make a final eligibility determination.

### PART I: THE PRE-APPLICATION PROCESS

#### 4.0 APPLYING FOR ASSISTANCE [24 CFR 1.4(B)(2)(II), 24 CFR 960.202(A)(2)(IV), AND PH OCC GB, P. 68]

FH is permitted by HUD to determine the format and content of applications. For the purpose of establishing an interest list, pre-applications will be accepted from any family wishing to apply for Low Income Public Housing. FH may select one or more of the following methods for pre-applications:

- Submitted on-line via FH website

- By Phone
- By mail
- Submitted in person
- By other methods as described in the public announcement

At the time, the FH announces its intent to open the interest list, the actual methods for accepting pre-applications will be clearly stated in the public announcement and similar outreach methods.

If an applicant is disabled and requires special accommodation in submitting a pre-application, and the disability is obvious, the FH will accommodate the request without verifying the disability. Specific instructions for making a reasonable accommodation request will be included in the public notice and other pre-application outreach materials.

#### Pre-Application via FH Website

Applications may only be submitted online using a computer, smartphone, tablet, or other electronic device with internet access @[www.fresnohousing.org](http://www.fresnohousing.org) main page under Quick Links FH Online Application.

#### Pre-Application Intake by Phone or by Mail

When this method is available, pre-applications taken by phone or mail will be recorded according to date and time received.

#### Pre-Application Intake in Person

When this method is available, pre-applications will be completed by the family and FH will record the date and time the application is received.

In accordance with HUD regulations {24 CFR 982.205 (a)(2)(i)} at the time an applicant is applying for Public Housing, if applications are being accepted for Housing Choice Voucher assistance, the family must be offered an opportunity to apply for the other program. FH will not merge the Public Housing interest list with the interest list for any other program (s) FH operates.

Duplicate pre-applications, including pre-applications from a segment of an applicant household, will not be accepted.

## **PART II: MANAGING THE INTEREST LIST**

### **4.1 PRE-APPLICATION**

FH utilizes a pre-application form and applicants must provide all requested information. Pre-applications are taken to compile an interest list. The following is true of the pre-application process:

- Pre-applications **will not** require an interview.
- Pre-applications will contain questions designed to obtain pertinent information from the applicant.

- The information provided and certified by the applicant on the pre-application **will not** be verified until the applicant has been selected for final eligibility determination.
- Final eligibility will be determined when the full application process is completed and all information is verified.

In accordance with HUD, but not limited to, the following information will be requested from the family at the time the pre-application is completed.

1. First name, middle initial, last name and social security number of all household members;
2. Address of Head of Household and phone numbers
3. Whether a current member of the U.S. Armed Forces; a veteran; or surviving spouse of a veteran;
4. Information pertaining to qualification for any local preference;
5. Racial or ethnic designation of all household members;
6. Birthdate of all household members;
7. Sex of all members, i.e. other adults and minors and relationship to head-of-household or co-head or spouse;
8. Whether any household member is a person with disabilities
9. E-mail address

## 4.2 INTEREST LIST STRUCTURE

Once the pre-application is complete, FH will place all applicants on the interest list except duplicate records; determination of eligibility will not be assessed until the full formal application process, which is covered in Section 4.20. FH will maintain an interest list by locality (city) for its developments in the County of Fresno. Within the list, FH will designate subparts to easily identify who should be offered the next available unit (i.e. mixed population, general occupancy, unit size, and accessible units). Families will receive confirmation that their pre-application was accepted and all changes must be made online within 10 business days in the **Applicant Portal**. For persons with disabilities or other reasonable accommodations, see Section 2.4 of this policy.

At the time of the pre-application, any information indicating the applicant may qualify for a local preference (e.g., an applicant's certification that they reside within the jurisdiction qualifying them for the Residency Preference) will be accepted without verification at the pre-application stage. Actual qualification for a local preference will be verified during the full application process.

The interest list will be maintained in accordance with the following guidelines:

1. The pre-application will be a permanent file.

2. Pre-applications must include as a minimum the following information to be placed on the interest list with the following information about each applicant: 1) name; 2) family size; 3) date and time of the completed pre-application; 4) information pertaining to possible qualification for a local preference; and 5) race and ethnicity of the head of household.
3. Pre-applications taken by a method other than lottery or random methodology will be maintained in order of preference. Pre-applications equal in preference will be maintained by date and time sequence.
4. Pre-applications taken by lottery or random methodology will be maintained in order of preference. Applicants with equal preference points will be randomized amongst other pre-applications with equal points.

False statements on the pre-application regarding preferences may be grounds for denial of admission and the pre-application may be cancelled; see Section 4.23 in this Chapter for related information about preference denials.

#### **Applicant Portal:**

The Applicant Portal has been established for persons who submit a pre-application with FH so that they may create an on-line account to review and update their personal information, including their current address, as well as indicate their continued interest in remaining on the interest list. FH's method of communication with the applicant may be by either mail, phone or electronic email, therefore, it is critical that applicants have a valid, current mailing address, phone number and email address at all times so that FH is able to make contact with the applicant when selected from the interest list.

### **4.3 PLACEMENT ON THE INTEREST LIST**

The FH will assign families on the interest list according to the bedroom size for which a family qualifies as established in its occupancy standards in Chapter 5. Families may request to be placed on the interest list for a unit size smaller than designated by the occupancy guidelines (as long as the unit is not overcrowded according to FH standards and local codes). However, in these cases, the family must agree not to request a transfer for one year after admission, unless they have a change in family size or composition. No applicant has a right or entitlement to be listed on the interest list, or to any particular position on the interest list.

### **4.4 OPENING AND CLOSING OF THE INTEREST LIST**

FH announces its intent to accept pre-applications for the purpose of establishing an interest list by placing a classified ad in a local newspaper and/or other suitable means if available; including but not limited to the agency website, social media, radio announcement, or other Public Service Announcements.

The advertisement will comply with HUD fair housing requirements and will contain:

- The dates and times when families may apply.
- The program(s) for which pre-applications will be taken.
- A brief description of the program(s).

- The methods by which pre-applications will be accepted.
- Limitations, if any, on who may apply.

Normally, the opening and closing dates for pre-application intake will be clearly stated in the notice.

However, if at the time, the interest list is opened, and the closing date for pre-application intake has not yet been determined, the notice will indicate that pre-application intake will be open until further notice. Once it becomes necessary to close the interest list due to the existing interest list containing an adequate pool of applicants (i.e., expected time before families will be selected is anticipated to be between 12 and 24 months) for use of available program funding, FH will apply the same advertising methods of broad general circulation for closing the interest list as were used for opening the interest list.

#### **4.5 FAMILY OUTREACH [24 CFR 903.2(D); 24 CFR 903.7(A) AND (B)]**

FH will publicize and disseminate information to make known the availability of housing units and housing-related services for very low-income families on a regular basis.

FH will communicate the status of housing availability to other service providers in the community. FH will advise them of housing eligibility factors and guidelines in order that they can make proper referrals for those who seek housing.

#### **4.6 REPORTING CHANGES IN FAMILY CIRCUMSTANCES**

Applicants are required to update any changes to their family composition, preference status, mailing address and/or email address within 10 business days of occurrence via the online applicant portal. This will also assist FH in establishing and maintaining a current and updated interest list to more effectively plan for future pre-application intake. Applicants are also required to respond to requests from FH to update information on their pre-application, or to determine their continued interest in assistance.

When an applicant supplies information, which indicates qualification for an additional preference, the applicant will be placed on the interest list in the appropriate order determined by the newly claimed preference, in combination with any previously claimed preference.

The interest list will be maintained with accurate information.

If an applicant is disabled and requires reasonable accommodation in submitting changes the accommodation request must be made in writing unless the person's disability is obvious or otherwise known.

#### **4.7 PURGING THE INTEREST LIST**

The primary goal in purging an interest list is to obtain current information on interested applicants and to remove applicants who are no longer interested in participating in the

program.

The interest list will be purged as needed to ensure that all applicants and applicant information is current and accurate. The FH has three methods of purging the interest list:

1. To update the interest list, the FH may send an update request via first-class mail to each applicant on the interest list. The applicant will be asked whether they have continued interest in the program and the FH will provide a deadline by which the applicant must respond. This update request will be sent to the last address that the FH has on record for the applicant. If no response is received by the deadline, the applicant will be removed from the interest list.
2. The FH may also require applicants to register and create an online applicant portal account so the FH may send an email. The applicant will be asked to access their online applicant portal account to save their spot on the interest list and the FH will provide a deadline by which the applicant must respond. If no response is received by the deadline, the applicant is removed from the interest list.
3. The FH may conduct a final draw periodically. Applicants not included in the final draw will be cancelled from the interest list and notified of their status via email and/or first class mail.

#### **4.8 CANCELLATION FROM THE INTEREST LIST FOR NO RESPONSE**

Any mailings to the applicant which require a response by a specific deadline will state that failure to respond by the deadline or failure to attend a scheduled appointment or failure to log onto the applicant portal to save their spot, will result in the applicant's name being removed from the interest list.

If a letter is returned by the Post Office or if the applicant does not save their spot via the online applicant portal the pre-application will be canceled without further notice, and the envelope and letter will be maintained in the file and/or a record of the email sent will be stored electronically.

If the applicant did not respond to FH request for information or updates because of a family member's disability, this fact will be verified and documented, and FH will reinstate the applicant in the family's former position on the interest list.

FH will cancel the pre-application when the applicant does not respond to FH request for response. Such failures to act on the part of the applicant prevent FH from making an eligibility determination; therefore, no informal hearing is required.

If a family is removed from the interest list for failure to respond, designated FH staff of the interest list may reinstate the family if she/he determines the lack of response was due to FH error, or to circumstances beyond the family's control.

### **PART III: RESIDENT SELECTION**

#### **4.9 RESIDENT SELECTION FROM THE INTEREST LIST FOR ADMISSION**

Once the interest list has been established and as units become available for admission, FH will create an application pool and begin the full application process. For information about Eligibility for Admission, refer to Chapter 3.

This section will describe the following policies:

- Selecting families from the interest list
- Establishing and verifying preferences
- Completing the full application for final eligibility determination
- Selecting of eligible applicants for unit offer

The policies are outlined and are organized into three sections, as follows:

- Creating an Application Pool. This section will cover creating an application pool from the interest list.
- The Full Application Process. This section will explain how the applicants are invited to the formal initial eligibility interview to complete the full application.
- Determining Applicants Eligible or Ineligible. This section will explain the process of the final eligibility determination for unit offer, determining family's ineligible or returning applicants to the interest list.

#### **4.10 CREATING AN APPLICATION POOL**

As families are selected from the interest list based on the FH turnover and the availability of funding, applicants will be selected from the interest list to form a final eligibility pool.

It is the FH objective to pull names from the interest list within a reasonable amount of time and determine if the family is eligible for assistance. The information provided on the pre-application will be verified during this final eligibility process.

#### **4.11 METHOD OF SELECTION**

FH preference system will work in combination with requirements to match the characteristics of the family to the type of unit available, including units with targeted populations, and further ~~deconcentration-deconcentrate~~ of poverty in public housing. When such matching is required or permitted by current law, FH will give preference to qualified families.

Families who are selected from the interest list will be contacted by FH to complete a full application for occupancy. Applicants may not retain their place on the wait-list if they refuse to complete the application process, or fail to provide required documentation to determine eligibility.

-Applicants who fail to respond to the initial notice will be removed from all Public Housing waiting and interest lists for Fresno County. Removal from the waiting list means the applicant must reapply if interested when the interest list for that locality re-opens.

Applicants removed due to failure to respond to the initial notice will have up to six (6) months from the removal date to contact FH to be reinstated on the interest list they were removed from and reinstated on the waitlist they were pulled for.

Preferences will be ranked by highest points. Applicants with the same ranking will be selected according to random lottery.

Once the initial application pool is established, each applicant will be invited to the full application process. FH will conduct this method of selection so there is a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in this policy.

#### **4.12 LOCAL PREFERENCES [24 CFR 960.206]**

Preferences affect only the order of the applicants on the interest list. They do not make anyone eligible who was not eligible before.

FH may establish local preferences based upon housing needs and priorities as determined by FH and based on accepted data sources, after providing an opportunity for public comment, and will consider the public comments received.

Although no verification of preference is required at pre-application, before the family is provided assistance, the family's eligibility for the preference based on the current circumstances will be verified.

FH has established the following local preferences:

##### **1. Residency Preference (15 points)**

This local preference would continue to give a preference for applicants who live, work or attend school in the City or County of Fresno.

This is further defined to mean that an applicant must only meet one of the following criteria to be eligible for the Residency Preference:

- The family must live, or at least one member must have a job, within the limits of Fresno County.
- Applicants who have been notified that they are hired to work in Fresno County must be treated as a resident.
- A resident is also defined to mean at least one adult member of the applicant household is currently enrolled in a Fresno County institution of higher education.

HUD regulations state that a residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

Change in an applicant's circumstances while on the interest list may affect the family's qualification for a preference. Applicants are required to notify FH via the online application system when their circumstances change.

##### **2. United States Veteran's Preference (10 points)**

This preference applies to active U.S. Armed Forces, veterans and their surviving spouses.

## Limited Preference

Limited preferences require a referral and are available even when the interest list is closed to other applicants. Limited preferences affect only the order of the applicants on the interest list. They do not make anyone eligible who was not eligible before. Referrals must meet eligibility criteria per Chapter 3.

### 1. Homeless Persons

FH will set aside up to 25 public housing units specifically for homeless families/individuals in homeless assistance programs and or initiatives. These 25 units for homeless families/individuals will take precedence over the following until fully utilized.

### 2. Displacement Referrals

Applicants who have vacated housing as a result of:

- a. A Natural disaster that has been declared by a local, state, or federal government entity (fire, flood, earthquake, etc.) verification to be provided by:
  - Certification from a unit of government concerning displacement due to disaster
- b. Federal, State or local government action related to code enforcement, public improvement or development. Verification to be provided by:
  - Certification from a unit of government concerning displacement due to code enforcement, public improvement or development and coordinate referral with FH;
- c. Victims of domestic violence, dating violence, sexual assault, or stalking who either:
  1. Have vacated due to actual or threatened physical violence directed against the applicant or the applicant's family by a spouse or other household member, or
  2. Live in housing with an individual who engages in such violence. Such "actual" or "threatened" violence must have occurred recently or be of a continuing nature. An applicant who lives in a violent neighborhood or is fearful of other violence outside the household is not considered involuntarily displaced.

3. As a result of an emergency transfer from another PHA or HUD covered housing program in accordance with Exhibit 16.5 VAWA policy.
- d. Applicant, or member of applicant family, has been advised by a law enforcement agency to relocate to minimize risk of violence against family members as a result of providing information on criminal activities to a law enforcement agency. Proper safeguards will be provided by the PHA to conceal the identity of families requiring protection against such reprisal. Verification to be provided by Law Enforcement Agency.
- e. Applicant, or member of applicant family, has been the victim of one or more hate crimes. "Hate crime" means actual or threatened violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, sex religion, familial status, disability, national origin, marital status, gender identity, or sexual orientation. The hate crime must be of a recent and continuing nature.
  - Verification to be provided by: Certification from local police, social service agency, court, clergy, physician, public or private shelter, or counseling facility concerning displacement due to domestic violence, fear of reprisal, or hate crime.

Applicants who have actually been displaced must not be living in "standard, permanent replacement housing," which is defined as housing that is decent, safe, and sanitary that is adequate for the family size (according to code/Housing Quality Standards), and that the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, hotels, motels, temporary shelters, and (in the case of victims of domestic violence) does not include housing in which the applicant lives with the individual who engages in such violence.

#### **4.13 PREFERENCE ELIGIBILITY [24 CFR 982.207]**

##### **Change in Circumstances**

Qualification for an additional preference, the applicant will be placed on the interest list in the appropriate order determined by the newly claimed preference, in combination with any previously claimed preference.

#### **4.14 INCOME TARGETING [24 CFR 960.202(B)]**

FH will monitor its admissions to ensure that at least 40% of families admitted to public housing in each fiscal year shall have incomes as defined in Section 3.15 of the Admissions and Continued Occupancy Policy.

FH shall, at its discretion, at least annually, exercise the "fungibility" provision of QHWRA

by admitting less than 40% of “extremely low income families” to public housing in a fiscal year, to the extent that the FH has provided more than 75% of newly available Section 8 Housing Choice Vouchers to “extremely low income families.” This fungibility provision discretion by the FH is also reflected in the FH’s Section 8 Administrative Plan.

The fungibility credits will be used to drop the annual requirement below 40% of admissions to public housing for extremely low income families by the lowest of the following amounts:

- The number of units equal to 10% of the number of newly available vouchers in the fiscal year; or
- The number of public housing units that 1) are in public housing developments located in census tracts having a poverty rate of 30% or more, and 2) are made available for occupancy by and actually occupied in that year by, families other than extremely low-income families.

The Fungibility Floor: Regardless of the above two amounts, in a fiscal year, at least 30% of the FH’s admissions to public housing will be for extremely low-income families. The fungibility floor is the number of units that cause the HA’s overall requirement for housing extremely low-income families to drop to 30% of its newly available units.

#### **4.15 DECONCENTRATION OF POVERTY AND INCOME MIXING [24 CFR 903.1 AND 903.2]**

The FH’s admission policy is designed to provide for deconcentration of poverty and income mixing by bringing higher income residents into lower income developments and lower income residents into higher income developments.

A resident’s gross annual income is used to determine income limits at admission and for income-mixing purposes.

##### **Deconcentration and Income-Mixing Goals**

FH’s deconcentration and income-mixing goal, in conjunction with the requirement to target at least 40 percent of new admissions to public housing in each fiscal year to “extremely low-income families,” will be to admit higher income families to lower income developments, and lower income families to higher income developments.

Deconcentration will apply to transfer families as well as applicant families.

##### **Development Designation Methodology [24 CFR 903.2(c)(1)]**

Annually, FH will determine on an annual basis the average income of all families residing in general occupancy developments.

FH will then determine the average income of all families residing in each general occupancy development.

FH will then determine whether each general occupancy development falls above, within, or below the Established Income Range (EIR).

The EIR is 85 percent to 115 percent (inclusive of 85 percent and 115 percent) of the FH-

wide average income for general occupancy developments.

FH will then determine whether or not developments outside the EIR are consistent with local goals and strategies in FH Agency Plan.

FH may explain or justify the income profile for these developments as being consistent with and furthering two sets of goals:

1. Goals of deconcentration of poverty and income mixing (bringing higher income residents into lower income developments and vice versa); and
2. Local goals and strategies contained in the FH Annual Plan.

### **Deconcentration Policy**

If, at annual review, there are found to be development(s) with average income above or below the EIR, and where the income profile for a general occupancy development above or below the EIR is not explained or justified in FH Plan, the FH shall adhere to the following policy for deconcentration of poverty and income mixing in applicable developments.

Skipping a family on the interest list to reach another family in an effort to further the goals of FH's deconcentration policy:

- If a unit becomes available at a development below the EIR, the first eligible family on the interest list with income above the EIR will be offered the unit. If that family refuses the unit, the next eligible family on the waiting list with income above the EIR will be offered the unit. The process will continue in this order. For the available unit at the development below the EIR, if there is no family on the waiting list with income above the EIR, or no family with income above the EIR accepts the offer, then the unit will be offered to the next family regardless of income.
- If a unit becomes available at a development above the EIR, the first eligible family on the interest list with income below the EIR will be offered the unit. If that family refuses the unit, the next eligible family on the waiting list with income below the EIR will be offered the unit. The process will continue in this order. For the available unit at the development above the EIR, if there is no family on the waiting list with income below the EIR, or no family with income below the EIR accepts the offer, then the unit will be offered to the next family regardless of income.

Skipping of families for deconcentration purposes will be applied uniformly to all families.

A family has the sole discretion whether to accept an offer of a unit made under the FH's deconcentration policy. FH shall not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under this deconcentration policy. However, FH shall uniformly limit the number of offers received by applicants, described in this Chapter.

If the average incomes of all general occupancy developments are within the Established Income Range, FH will be considered to be in compliance with the deconcentration

agreement.

Nothing in the deconcentration policy relieves FH of the obligation to meet the income targeting requirements.

#### **4.16 PROMOTION OF INTEGRATION**

Beyond the basic requirement of nondiscrimination, FH shall affirmatively further fair housing to reduce racial and national origin concentrations.

FH shall not require any specific income or racial quotas for any development or developments.

FH shall not assign persons to a particular section of a community or to a development or building based on race, color, sex, religion, disability, familial status, disability, national origin, marital status, gender identity, or sexual orientation for purposes of segregating populations.

#### **4.17 UNITS DESIGNATED FOR THE ELDERLY OR DISABLED [24 CFR 945]**

FH may elect at some future time to submit an Allocation Plan as required by the 1992 Housing Act to designate specific units or sites for elderly or disabled applicants only. In accordance with the 1992 Housing Act, elderly families with a head, spouse or sole member at least 62 years of age or disabled families with a head, spouse or sole member who qualifies as a person with disabilities as defined in 24 CFR 945.303(c) (1) would receive a preference for admission to such units or buildings covered by a HUD-approved Allocation Plan.

#### **4.18 MIXED POPULATION UNITS [24 CFR 960.407]**

A mixed population development is a public housing development, or portion of a development that was reserved for elderly families and disabled families at its inception (and has retained that character).

In accordance with the 1992 Housing Act, elderly families whose head spouse or sole member is at least 62 years of age, and disabled families whose head, co-head or spouse or sole member is a person with disabilities, will receive equal preference to such units.

No limit will be established on the number of elderly or disabled families that may occupy a mixed population property. All other FH preferences will be applied.

#### **4.19 GENERAL OCCUPANCY UNITS**

General occupancy units are designed to house all populations of eligible families. In accordance with the FH's occupancy standards, eligible families' not needing units designed with special features or units designed for special populations will be admitted to the FH's general occupancy units.

FH will use its local preference system as stated in this chapter for admission of eligible families to its general occupancy units.

## 4.20 FULL APPLICATION PROCESS

HUD recommends obtaining the information and documents needed to make an eligibility determination through a face-to-face interview.

FH utilizes the full application interview to discuss the family's circumstances in greater detail, to clarify information which has been provided by the family, and to ensure that the information is complete. The interview is also used as a vehicle to provide information about the application and verification process, as well as to advise the family of other FH services or programs for which the family may be available.

The interviews are scheduled based on order of selection from the interest list. Applicants may be required to complete a Personal Declaration Packet which may be mailed or emailed to the applicant in advance to complete.

Being invited to attend an interview does not constitute admission to the program. The head of household, spouse and all adult family members are required to attend the interview. Exceptions may be made for adult students attending school out of state or for members for whom attendance would be a hardship.

Applicants who want to reschedule an appointment must make the request to reschedule no later than 2 days prior to the original appointment date. If the applicant does not reschedule or misses one scheduled meeting, FH will reject the application.

The family will be required to provide the following information for each family member within the household:

- Name of Head of Household and Social Security Number
- Racial or ethnic designation of all family members
- Names, sex and birthdates of all family members
- Relationship of all family members to head of household
- Street Address and phone numbers (message and contact numbers)
- Mailing Address (If PO Box or other permanent address)
- Amount(s) and source(s) of income received by all household members
- Information regarding disabilities to determine qualifications for allowances and deductions
- Information related to qualification for preferences
- Social Security Numbers for all family members [Refer to Notice PIH 2012-10 & Chapter 3, Section 3.18 Timeframe for Providing SSN.]
- Citizenship/eligible immigration status
- Answers to questions regarding arrests/convictions for drug-related or violent criminal activity or child molestation

- If applicable, a Request for Specific Accommodation, if needed by a person with disabilities in order to fully utilize program and services
- Current and previous landlord's names and addresses
- Emergency contact person and address. Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the FH's application [Notice PIH 2009-36].
- Program integrity questions regarding previous participation in HUD programs

#### **4.21 VERIFICATION**

All adult members must sign and complete the Application for initial occupancy, HUD Form 9886 (Release of Information), the declarations and consents related to citizenship/immigration status and any other documents required by FH. Applicants will be required to sign specific verification forms for information, which is not covered by the HUD Form-9886.

Applicant is required to provide necessary verification, which may not be more than 60 days old from the date of the initial eligibility interview. All information provided by the applicant, will be verified, using the verification procedures described in Chapter 6. If any information is not supplied or if the family fails to sign any of the forms required, the application may be denied.

As part of the full application process, FH will verify the family's eligibility for a local preference based on current circumstances

After the verification process is completed, FH will make a final determination of eligibility. This decision is based upon information provided by the family, the verification completed by FH, and the current eligibility criteria in effect.

#### **4.22 DETERMINING APPLICANTS ELIGIBLE OR INELIGIBLE**

Each applicant will be interviewed by FH staff to review the information on the Application for initial occupancy and Personal Declaration Packet.

If FH determines at or after the interview that additional information or document(s) are needed, the FH will request the document(s) or information in writing. The family will be given 10 business days to supply the information and the applicant's file will be placed in a pending status. Extensions may be approved based on extenuating circumstances. If the information is not supplied within this time period, the application may be cancelled without further notice.

If the family is determined eligible, they will be notified of the approximate time that assistance should be available. The eligible applicants will be offered a unit based on wait list placement.

Applicants that have not cleared the criminal background check will be placed on a pending status.

If FH determines that the family is ineligible, the FH 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 hearing in accordance with Chapter 14, Grievances & Appeals.

Upon making an eligibility determination, FH must provide the family a notice of VAWA rights (VAWA form HUD-5380) as well as the VAWA self-certification form (VAWA form HUD-5382) in accordance with the Violence against Women Act of 2013, and as outlined in Chapter 16 of this plan. The notice and self-certification form must accompany the written notification of eligibility determination. This notice must be provided in both of the following instances:

- (1) when a family is notified of its eligibility; or
- (2) when a family is notified of its ineligibility.

#### **4.23 PREFERENCE DENIAL**

If upon verification FH determines that the family does not qualify for the preference claimed, the family does not receive the preference and the pre-application may be cancelled or put back on the interest list; unless the family was selected during the final draw, in which case the pre-application may be cancelled. The family will be notified in writing when this occurs, and advised of the family's right to request an informal review. For additional information, refer to Chapter 14.

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## CHAPTER 5 – OCCUPANCY STANDARDS & UNIT OFFERS

### INTRODUCTION

This Chapter states FH Occupancy Standards used to determine the appropriate development type and unit size for families. Policies in this chapter are organized in two parts.

**Part I: Occupancy Standards.** This part contains FH's standards for determining the appropriate unit ~~size based on for family~~family es size of different sizes and types.

**Part II: Unit Offers.** This part contains the FH's policies for making unit offers, and describes actions to be taken when unit offers are refused.

### PART I: OCCUPANCY STANDARDS

Occupancy standards are established by FH to ensure that units are occupied by families of the appropriate size. This policy maintains the maximum usefulness of the units and prevents underutilization. Part I of this chapter explains the occupancy standards. These standards describe the methodology and factors FH will use to determine the size of the unit for which a family qualifies, and includes the identification of the minimum and maximum number of household members for each unit size. This part also identifies circumstances under which an exception to the occupancy standards may be approved.

#### 5.0 DETERMINING UNIT SIZE

##### GUIDELINES FOR DETERMINING BEDROOM SIZE

Bedroom Size	Persons in Household: Minimum #	Persons in Household: Maximum #
0 Bedroom	1	2
1 Bedroom	1	3
2 Bedrooms	2	5
3 Bedrooms	3	7
4 Bedrooms	4	9
5 Bedrooms	5	11

All guidelines in this section relate to the number of bedrooms in the unit. Dwelling units will be so assigned that:

Generally, FH will assign one bedroom to two people; however, FH may consider assigning units as follows:

1. Adults of different generations, persons of the opposite sex (other than spouses and significant others), and unrelated adults may not be required to share a bedroom.
2. Minor household members of opposite sex regardless of age (i.e., from birth) may

be allocated separate bedrooms.

3. Minor household members of the same sex with an age difference exceeding ten (10) years may be allocated separate bedrooms.
4. Occupants under Foster care may be included in determining unit size based on criteria described in #2 and #3.
5. Live-in attendants will generally be provided a separate bedroom. No additional bedrooms are provided for the attendant's family.

Space may be provided for a household member who is away at school but who lives with the family during school recesses.

FH may offer a family a unit that is larger than required by FH's occupancy standards if a wait list for the larger bedroom size has been exhausted.

All members of the family residing in the unit must be approved by FH. The family must obtain approval of any additional family member before the person occupies the unit except for additions by birth, adoption, or court-awarded custody, in which case the family must inform FH within ten business days.

The temporary absence or addition of a minor household member due to foster care placement ~~from the home due to placement in foster care~~ may be considered in determining a family's composition, which will then be considered in determining bedroom size. Therefore, the family must inform FH within 10 business days. Failure to notify FH may result in notice of lease violation.

## 5.1 EXCEPTIONS TO OCCUPANCY STANDARDS

### Person with Disability

FH will grant an exception upon request as a reasonable accommodation for persons with disabilities if the need is appropriately verified.

Accessible units will be offered to applicants not in need of accessible features only with the understanding that such applicants must accept a transfer to a non-accessible unit at a later date, if a person with a mobility impairment requiring the unit applies for housing, is determined eligible, and a comparable unit is available.

### Other Circumstances

Circumstances may dictate a larger size than the occupancy standards permit when:

Persons cannot share a bedroom because of a need for medical equipment due to its size and/or function. Verification from a doctor must accompany requests for a larger bedroom to accommodate medical equipment.

Requests based on health-related reasons must be verified by a doctor as to the need of a different size unit.

FH will grant exceptions from the guidelines in cases where it is the family's request or FH determines the exceptions are justified by the relationship, age, sex, health, or disability of family members, or other individual circumstances, and there is a vacant unit available. If an applicant requests to be listed on a smaller or larger bedroom size waiting list, the following guidelines will apply.

Applicants may request to be placed on the interest list for a unit size smaller than designated by the occupancy guidelines, (as long as the unit is not overcrowded according to FH Occupancy Standards and local codes). The family must agree not to request a transfer until they have been admitted and have occupied the unit for 12 months. (Refer to Chapter 12, Transfer Policy for exceptions.)

The family may request to be placed on a larger bedroom size waiting list than indicated by the FH's occupancy guidelines. The request must explain the need or justification for a larger bedroom size, and must be verified by the FH before the family is placed on the larger bedroom size list.

In all cases, where the family requests an exception to the general occupancy standards, FH will evaluate the relationship and ages of all family members and the overall size of the unit.

## 5.2 OCCUPANCY STANDARDS ARE APPLICABLE TO TRANSFERS

When a change in the circumstances of a resident's family requires a change of unit size and the unit is not available at the time requested, the family will be placed on the Transfer List and must be in good standing with FH. Residents on the transfer list may take priority over applicants on the interest list in order to meet occupancy standards and the minimum/maximum occupancy requirements.

The unit considerations in this section should be used as a guide to determine whether and when the bedroom size should be changed. If an unusual situation occurs, which is not currently covered in this policy, the case should be taken to the Agency Designee who will make determination after review of the situation, the individual circumstances, and the verification provided.

## PART II: UNIT OFFERS

24 CFR 1.4(b)(2)(ii); 24 CFR 960.208

## 5.3 ~~PLAN FOR~~ UNIT OFFERS

~~When assigning FH plan for selection of applicants and assignment of dwelling units, FH will ensure equal opportunity and non-discrimination on grounds of race, color, sex, religion, familial status, disability, national origin, marital status, gender identity, actual or perceived sexual orientation, gender identity, or gender expression, in accordance with the Fair Housing Act, HUD's Equal Access Rule, or State, and other local anti-discrimination laws. FH plan for selection Unit assignment is based solely on unit of suitable size and types of unit available at the site for which the applicant was selected.~~

#### **5.4 TIME LIMIT FOR UNIT OFFER ACCEPTANCE OR REFUSAL**

Applicants must accept or refuse the unit offer within three (3) business days of the date of the unit offer. Offer made by telephone will be confirmed by letter. When an applicant rejects the unit offer, FH will remove the applicant's name from the waiting list by locality (city) for its development in the County of Fresno. Removal from the waiting list means the applicant must reapply if still interested when the interest list for that locality re-opens.

Once an applicant is housed in a public housing development, his or her name will be removed from all other public housing site based interest/waiting lists. The applicant will retain their place on any other non-public housing interest list, including housing choice voucher, if applicable.

#### **5.5 OFFER OF ACCESSIBLE UNITS [24 CFR 960.206 (b)(2)(c)]**

FH has units designed with special features for persons with mobility impairments, referred to as accessible units.

Families who do not require the special features of an accessible unit may be offered these units if there are no eligible applicants requiring these units.

When a vacant accessible unit is available, FH will consider the following before offering the accessible unit to an applicant who does not require the special feature:

- A current occupant of another unit within the development, or other public housing developments, who requires the special features of the vacant unit and has an approved Reasonable Accommodation request.
- An eligible qualified applicant on the waiting list who requires the vacant accessible unit.

When offering an accessible/adaptable unit to an applicant who does not require the special features, FH will require the applicant to sign an Occupancy Waiver agreeing that the applicant will relocate within 30 days to the first available vacant unit of appropriate size, at the same housing development, should the accessible unit be required for an eligible disabled family.

#### **5.6 APPLICANTS UNABLE TO TAKE OCCUPANCY**

If an applicant is willing to accept the unit offered, but is unable to take occupancy at the time of the offer for "good cause," the applicant will not be removed from the waiting list.

Examples of "good cause" reasons for the refusal to take occupancy of a housing unit include, but are not limited to:

1. Unit is not of the appropriate size and type, and the applicant would be able to

reside there only temporarily;

2. Unit, if applicable, contains lead-based paint, and accepting the offer could result in subjecting the applicant's children under seven (7) years of age to lead-based paint poisoning;
3. A qualified, knowledgeable health professional verifies the temporary hospitalization or recovery from illness of the principal household member, other household members, or a live-in aide necessary to care for the principal household member;
4. The unit is inappropriate for the applicant's disabilities.
5. FH has disclosed a death in the unit within the past three (3) years.

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## CHAPTER 6 – INCOME AND RENT DETERMINATIONS

[24 CFR PART 5, SUBPARTS E AND F; 24 CFR 960, SUBPART C]

### INTRODUCTION

The accurate calculation of Annual Income and Adjusted Income ensures that families are not paying more or less money for rent than their obligation under the regulations.

This chapter defines the allowable deductions from gross Annual Income and how the presence or absence of household members may affect the Total Tenant Payment (TTP). Income and TTP are calculated in accordance with 24 CFR Part 5, Subpart F and further instructions set forth in HUD Notices, Memoranda and Addenda. However, the QHWR now gives FH broader flexibility to define terms and to develop standards in order to assure consistent application of the various factors that relate to the determination of TTP.

**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 FH policies for calculating annual income are found in Part I.

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

**Part III: Calculating Rent.** This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining family rent payment. Also included here are flat rents, method of prorating assistance for mixed family's, and the family's choice in rents, including mixed family rent when TTP is higher than public housing flat rent.

### PART I: ANNUAL INCOME

#### 6.0 ANNUAL INCOME

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

24 CFR 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) Which 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 ACOP under "Exhibit":

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

## 6.1 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 and income. However, changes can be reported in writing by any adult household member. 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(a)(1)].
Head, spouse, or co-head 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 co-head)	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

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 FH indicating that the student has established a separate household or the family declares that the student has established a separate household i.e. being listed on a rental contractor or signing a new rental agreement outside of the agency.

### Absences Due to Placement in Foster Care

Minor household member (s) temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR 5.403]. Temporarily absent shall mean up to 18 months.

If a minor household member has been placed in foster care, FH 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 Co-head**

An employed head, spouse, or co-head absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

#### **Individuals Confined for Medical Reasons**

An individual confined to a nursing home or hospital on a permanent basis is not considered a family member. If there is a question about the status of a family member, FH will request verification from a responsible medical professional and will use this to make a 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) 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. If there is a dispute about which family should claim them, FH 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. In cases where there is no court order or family does not file income taxes, FH may use school records showing address of child(ren), a Welfare printout showing child(ren) listed in the home, or other creditable documentation.

#### **Caretakers for Minor Household Member (s)**

If neither parent remains in the household nor the appropriate agency has determined that another adult is to be brought into the assisted unit to care for the minor household member (s) for an indefinite period, FH will treat the adult as a visitor for the first 30 calendar days. This will be noted as an exception to FH's Visitor Policy.

If by the end of that period, court-awarded custody or legal guardianship has been awarded to the caretaker, and the caretaker qualifies under the Resident Suitability criteria, the lease will be transferred to the caretaker.

If the court has not awarded custody or legal guardianship, but the action is in process, FH will secure verification from social services staff or the attorney as to the status.

FH will transfer the lease to the caretaker, in the absence of a court order, if the caretaker qualifies under the Resident Suitability criteria and has been in the unit for more than 30 days and it is reasonable to expect that custody will be granted.

When ~~the~~ FH approves a person to reside in the unit as a caretaker for minor household member (s), the income of the caretaker should be counted pending a final disposition. FH will work with the appropriate service agencies to provide a smooth transition in these cases.

## 6.2 ANTICIPATING ANNUAL INCOME

FH 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

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

- An imminent change in circumstances is expected, such as, but not limited to a natural disaster, i.e. agricultural freeze;
- 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)]
- FH believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)], for example most recent W2 or signed income tax return.

When FH cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, suspected fraud, inconsistent benefits amounts for child support, welfare benefits, or unemployment.) FH 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 FH to show why the historic pattern does not represent the family’s anticipated income.

### Known Changes in Income

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

**Example:** An employer reports that a full-time employee who has been receiving \$8/hour will begin to receive \$8.25/hour in the eighth week after the effective date of the reexamination. In such a case the PHA would calculate annual income as follows:  
( $\$8/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}$ ) + ( $\$8.25 \times 40 \text{ hours} \times 45 \text{ weeks}$ ).

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases, FH 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 the FH policy on reexaminations does not require interim reexaminations for other types of changes.

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

**EIV quarterly wages will not be used to project annual income at an annual or interim reexamination.**

### **Up-Front Income Verification (UIV) and Income Projection using HUD's Enterprise Income Verification (EIV) System [HUD Notice PIH 2017-12 (HA)]**

HUD allows FH to use UIV data as third-party verification of an income source when a resident does not dispute the source. UIV data, however, is generally several months old. Therefore, except in the case of SS and SSI benefits, which are not subject to frequent or dramatic changes, HUD expects FH to base its income projection on documentation of current circumstances provided by the resident (such as consecutive pay stubs dated within the last 60 days) or by the income source (if FH determines that additional verification is necessary).

FH will use HUD's Enterprise Income Verification (EIV) system in its entirety to verify resident employment and income information during mandatory reexaminations of family composition and income in accordance with 24 CFR 5.236. [See Chapter 7 - Verification Procedures for guidance in accordance to HUD Notice PIH 2017-12 (HA)]

## **6.3 EARNED INCOME**

### **Types of Earned Income Included in Annual Income**

#### **Wages and Related Compensation [24 CFR 5.609(b)(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 is included in annual income.

For persons who regularly receive bonuses or commissions, FH will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, FH will use the prior year amounts. In either case, the family may provide, and FH 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, FH will count only the amount estimated by the employer. The file will be documented appropriately.

#### **Some Types of Military Pay**

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

#### **Athletic Scholarship (PIH 2005-16):**

The amount received under an "athletic scholarship" designated for housing costs.

Example: A student athlete receives an athletic scholarship of \$25,000 per year with \$5,000 per year specifically available for housing costs. The PHA would consider the \$5,000 in the determination of income.

#### **6.4 TYPES OF EARNED INCOME NOT COUNTED IN ANNUAL INCOME**

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

This type of income (including gifts) is not included in annual income.

Sporadic income is income that is not 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 historical, stable pattern of income exist.

##### **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.

##### **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, spouse, or co-head) are not counted [24 CFR 5.609(c)(11)]. To be considered "full-time," a student must be enrolled for the number of hours or course defined by the educational institution attending.

##### **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)].

##### **Income Earned under Certain Federal Programs [24 CFR 5.609(c)(17)]**

Income from some federal programs is specifically excluded from consideration as income, 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 1965 (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 [24 CFR 5.600(c) (8)(iv)]**

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 FH, 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 FH's governing board. No resident may receive more than one such stipend during the same period of time.

#### **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)].

FH 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].

FH 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, FH 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 FH's interim reporting requirements.

#### **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.

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.

## **6.5 EARNED INCOME DISALLOWANCE [24 CFR 960.255] Streamlining Final Rule (SFR) Federal Register 3/8/16]**

The earned income disallowance (EID) encourages people to enter the work force by not including the full value of increases in earned income for a period of time. The full text of 24 CFR 960.255 is included as Exhibit 6-4 at the end of this ACOP. Eligibility criteria and limitations on the disallowance are summarized below.

### **Eligibility**

This disallowance applies only to individuals in families already participating in the public housing 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 (CALWORKS) 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 baseline income. The family member's baseline income is his or her income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that he or she is participating in the EID.

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

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

### **Original Calculation Method (for residents qualifying before May 9, 2016)**

#### **Initial 12-Month Exclusion**

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

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, FH 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). FH will retain the EID documentation in the resident file for the “duration of tenancy” and up to three (3) years after program participation ends.

### **Revised Calculation Method (for residents qualifying after May 9, 2016)**

#### **Initial 12-Month Exclusion**

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

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

***Second 12-Month Exclusion***

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

***Lifetime Limitation***

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility clock starts at the same time that the initial exclusion period begins and stops 24 consecutive months later regardless of how many months were used during that 24-month period. If a family member discontinues the employment that initially qualified the family for the EID anytime during that 24-month period the two-year eligibility clock still continues to run. During the 24-month period, an individual remains eligible for EID even if they receive assistance from a different housing agency, move between public housing and Section 8 assistance, or have breaks in assistance.

**6.6 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”

To determine business expenses that may be deducted from gross income, FH 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 FH 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 FH 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 FH 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 FH 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 resident family provided an up-front loan of \$2,000 to help a business get started, FH 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.

**6.7 ASSETS [24 CFR 5.609(B)(3) AND 24 CFR 5.603(B)]**

There is no asset limitation for participation in the public housing program. However, HUD requires that FH 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, FH will 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*, which are located at the end of this ACOP under "Exhibits".

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

**General Policies**

### **Income from Assets**

FH 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 FH 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) the FH 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, FH can take into consideration past rental income along with the prospects of obtaining a new resident.

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 FH 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 FH 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 [PH OCC GB, p. 121].

### **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].

### **Imputing Income from Assets [24 CFR 5.609(b)(3)]**

When net family assets are \$5,000 or less, FH will include in annual income the actual income anticipated to be derived from the assets. When the family has net family assets in excess of \$5,000, FH 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.

### **Determining Actual Anticipated Income from Assets**

It may or may not be necessary for FH 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, FH 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, FH will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, FH will prorate the asset evenly among all owners.

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

HUD regulations require FH 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**

FH 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 \$1,000.

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

Assets placed by the family in nonrevocable 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 resident 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. FH may verify the value of the assets disposed of if other information available to FH does not appear to agree with the information reported by the family.

### **6.8 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, FH will use the average monthly balance for the last six months.

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

In determining the anticipated income from an interest-bearing checking or savings account, FH 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, FH 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), FH 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].

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

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

- Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]
- 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]

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

For the purpose of calculating expenses to convert to cash for real property, FH will use ten percent of the market value of the home.

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 FH 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.

### *Nonrevocable 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)].

## **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, the FH 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.

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, the FH will use the family's estimate of the value. FH may obtain an appraisal if there is reason to believe that the family's estimated value is off by \$50 or more. 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 only those items not held as an investment. It may include clothing, furniture, household furnishings, jewelry, 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.

Term life insurance is not included in calculation of the value of assets.

## **6.9 PERIODIC PAYMENTS**

Periodic payments are forms of income received on a regular basis. HUD regulations specify periodic payments that are included and excluded from annual income.

### **Periodic Payments Included in Annual Income**

- Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family [24 CFR 5.609(b) (4) and (b)(3)].
- Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 CFR 5.609(b)(4) and HCV, p. 5-14]

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

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income [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].

When a delayed-start payment is received and reported during the period in which the FH is processing an annual reexamination, the FH may adjust the resident 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 the FH.

### **Treatment of Overpayment Deductions from Social Security Benefits**

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

10]. For all other reductions (student loans, child support, back taxes, or other federal debt) the gross SS benefits are counted. [PIH 2018-24]

### **Periodic Payments Excluded from Annual Income**

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the resident family, who are unable to live alone) [24 CFR 5.609(c)(2)]. Kinship care payments are considered equivalent to foster care payments and are also excluded from annual income [Notice PIH 2012-1].

The FH 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.

- 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 [24 CFR 5.609(b) (4)].

## **6.10 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)].

## **6.11 WELFARE ASSISTANCE**

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (CALWORKS) 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]**

The FH 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, the FH must include in annual income “imputed” welfare income.

FH must request that the welfare agency inform the FH 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)].

For special procedures related to grievance hearings based upon the FH’s denial of a family’s request to lower rent when the family experiences a welfare benefit reduction, see Chapter 14, Grievances and Appeals.

### **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)].

### **General Relief [24 CFR 5.609]**

The maximum amount of General Relief assistance a household can receive is counted as annual income regardless if the assistance is reduced by the welfare agency based on changes to the actual cost of shelter and utilities. For example, if the amount of General Relief assistance is \$245.00 and is reduced by actual cost of shelter and utilities to \$190.00, the amount used to calculate annual income will be \$245.00.

## **6.12 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 a resident family.

### **Alimony and Child Support**

FH must count alimony awarded as part of a divorce or separation agreement or child support amounts awarded by the court.

FH will count court-awarded amounts for alimony and/or child support unless the FH verifies that:

- (1) the payments are not being received as awarded and/or
- (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments.

Families who do not have court-awarded alimony and/or 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**

FH must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with a resident 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 (can be defined as 3 or more in the last 3 years) 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 the FH. For contributions that may vary from month to month (e.g., utility payments), the FH will include an average amount based upon past history.

Regular contributions can be defined as three (3) or more consecutive payments within the last twelve (12) months from the time of initial certification/reexamination.

## **6.13 ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME**

Other exclusions contained in 24 CFR 5.609(c), PIH Notice 2019-09 and updated by FR Notice 5/20/2014 that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- The full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR 5.609(c) (6)].

Regular financial support from parents or guardians to students for food, clothing personal items, and entertainment **is not** considered student financial assistance and is included **in** annual income.

- 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)], FR Notice 5/20/2014. HUD publishes an updated list of these exclusions periodically. It includes:
  - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
  - (b) Benefits under section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
  - (c) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044 (g), 5058)
  - (d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626 (c)).
  - (e) Income derived from certain sub marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
  - (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624 (f))
  - (g) Payments received under programs funded in whole or in part under the workforce Investment Act of 1998 (29 U.S.C. 2931)
  - (h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
  - (i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L 94-540, 90 Stat. 2503-04)
  - (j) Payments, funds or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f (b))

- (k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010
- (l) The first 2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C 1407-1408)
- (m) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native America housing programs)
- (n) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- (o) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent Orange-product liability litigation*, M.D.L. No. 381 (E.D.N.Y)
- (p) Payments received under 38 U.S.C. 1833 (c) to children of Vietnam veterans born with spinal bifida, children of women of Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida
- (q) Payments received under the Marine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (r) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- (s) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C.32(j))
- (t) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu)
- (v) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637 (d))

- (w) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42. U.S.C. 10602)
- (x) Any amounts in “individual development account” as provided by the Assets for Independence Act, as amended in 2002
- (y) *Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013-30, “Exclusion from Income of Payments under Recent Tribal Settlements” (25 U.S.C. 117b(a))*
- (z) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organization.
- (aa) Distributions from an ABLE account and actual or imputed interest on the ABLE account balance
  - Contributions to ABLE accounts (529A Plan)
    - The Achieving a Better Life Experience (ABLE) Act was signed into law on December 19, 2014. The ABLE Act allows States to establish and maintain a program under which contributions may be made to a tax-advantaged ABLE savings account to provide for the qualified disability expenses of the designated beneficiary of the account. The designated beneficiary must be person with disabilities, whose disability began prior to his/her 26<sup>th</sup> birthday and who meets the statutory eligibility requirements.
    - ABLE accounts are federally mandated to be excluded from the calculation of income and assets, as required under the Achieving a Better Life Experience Act of 2014 (ABLE Act). Per the mandate of the ABLE act, for the purpose of determining eligibility and continued occupancy, HUD will disregard amounts in the designated beneficiary’s/individual’s ABLE account.

## **PART II: ADJUSTED INCOME**

### **6.14 INTRODUCTION**

HUD regulations require the FH 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 (PHA) 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.

### **Anticipating Expenses**

Generally, FH 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 non-school periods and cyclical medical expenses), FH will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, FH 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. FH may require the family to provide documentation of payments made in the preceding year.

## **6.15 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 co-head 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)].

## **6.16 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, co-head, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, co-head, or sole member is a person with disabilities [24 CFR 5.403].

## **6.17 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 co-head 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.

#### **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.

<b>Summary of Allowable Medical Expenses from IRS Publication 502</b>	
Services of medical professionals	Substance abuse treatment programs
Surgery and medical procedures that are necessary, legal, non-cosmetic	Psychiatric treatment
Services of medical facilities	Ambulance services and some costs of transportation related to medical expenses
Hospitalization, long-term care, and in-home nursing services	The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)
Prescription medicines and insulin, but <u>not</u> nonprescription medicines even if recommended by a doctor	Cost and continuing care of necessary service animals
Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)	Medical insurance premiums or the cost of a health maintenance organization (HMO)
<b>Note:</b> 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 co-head 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, FH will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

### **6.18 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, FH 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 FH 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 [PH OCC, p. 124].

### **Eligible Disability Expenses**

Examples of auxiliary apparatus are provided in the *PH Occupancy Guidebook* as follows:

“Auxiliary apparatus: Including wheelchairs, walkers, scooters, reading devices for persons with visual disabilities, equipment added to cars and vans to permit their use by the family member with a disability, or service animals” [PH OCC GB, p. 124], but only if these items are directly related to permitting the disabled person or other family member to work.

### **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, FH 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 resident family [23 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the resident family may be deducted if they are 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.

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

### **6.19 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.”

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.

#### 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, FH 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 FH.

##### **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.

FH 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, the FH 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 resident family. FH 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, FH 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, FH may use the schedule of child care costs from the local welfare agency. Families may present, and the FH will consider, justification for costs that exceed typical costs in the area.

## **PART III: CALCULATING RENT**

### **6.20 OVERVIEW OF INCOME-BASED RENT CALCULATIONS**

The first step in calculating income-based rent is to determine each family's total tenant payment (TTP). Then, if the family is occupying a unit that has tenant-paid utilities, the utility allowance is subtracted from the TTP. The result of this calculation, if a positive number, is the resident rent. If the TTP is less than the utility allowance, the result of this calculation is a negative number, and is called the utility reimbursement, which may be paid to the family.

#### **TTP Formula [24 CFR 5.628]**

HUD regulations specify the formula for calculating the total tenant payment (TTP) for a resident 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) **[24 CFR 5.628]**
- A minimum rent \$50 **[24 CFR 5.630]**

#### **Utility Reimbursement [24 CFR 960.253(c) (3)]**

Utility reimbursement occurs when any applicable utility allowance for tenant-paid utilities exceeds the TTP. FH will make utility reimbursements to the family.

FH may make all utility reimbursement payments to qualifying families on a monthly basis or may make quarterly payments when the monthly reimbursement amount is \$15.00 or less. Payments must be prorated if the family leaves the program in advance of its next quarterly reimbursement. Reimbursements must be made once per calendar-year quarter. The FH will allow a hardship exemption policy for families whom are receiving a quarterly reimbursement if receiving such payment would create a financial hardship for the family. The FH must issue reimbursements that exceed \$15.00 per month on a monthly basis

### **6.21 FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630]**

FH will 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 the FH 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).

### **Implementation of Hardship Exemption**

#### **Determination of Hardship**

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

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

FH may not evict the family for nonpayment of minimum rent during the 90-day period beginning the month following the family's request for a hardship exemption.

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

<b>Example: Impact of Minimum Rent Exemption</b>			
Assume the PHA has established a minimum rent of \$50.			
<b>TTP – No Hardship</b>		<b>TTP – With Hardship</b>	
\$0	30% of monthly adjusted income	\$0	30% of monthly adjusted income
\$15	10% of monthly gross income	\$15	10% of monthly gross income
N/A	Welfare rent	N/A	Welfare rent

\$50 Minimum rent	\$50 Minimum rent
Minimum rent applies. TTP = \$50	Hardship exemption granted. TTP = \$15

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.

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

### **No Financial Hardship**

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

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

### **Temporary Hardship**

If FH determines that a qualifying financial hardship is temporary, FH must reinstate the minimum rent from the beginning of the first of the month following the date of the family's request for a hardship exemption.

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

FH will enter into a repayment agreement in accordance with the FH's repayment agreement policy.

### **Long-Term Hardship**

If the FH determines that the financial hardship is long-term, the FH 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.

## **6.22 UTILITY ALLOWANCES [24 CFR 965, SUBPART E]**

Utility allowances are provided to families paying income-based rent and/or families who elect to pay flat rent for their unit size when the cost of utilities is not included in the rent. When determining a family's income-based rent, the FH must use the utility allowance applicable to the type of dwelling unit leased by the family. (see Chapter 16)

Revised utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted.

Reasonable Accommodation [24 CFR 8]

On request from a family, PHAs must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family with a disability [PH Occ GB, p. 172].

Residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172]. See Chapter 2 for policies related to reasonable accommodations.

## **6.23 PRORATED RENT 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. The FH must prorate the assistance provided to a mixed family. The FH will first determine TTP as if all family members were eligible and then prorate the rent based upon the number of family members that actually are eligible. To do this, the FH must:

- (1) Subtract the TTP from the flat applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible.
- (2) Divide the family maximum subsidy by the number of persons in the family to determine the maximum subsidy per each family member who is eligible (member maximum subsidy).
- (3) Multiply the member maximum subsidy by the number of eligible family members.
- (4) Subtract the subsidy calculated in the last step from the flat rent. This is the prorated TTP.
- (5) Subtract the utility allowance for the unit from the prorated TTP. This is the prorated rent for the mixed family.

The revised public housing flat rents will be applied to a family's rent calculation at the first annual reexamination after the revision is adopted.

(6) When the mixed family's TTP is greater than the applicable flat rent, the FH must use the mixed family's TTP to calculate the prorated rent. The mixed family's TTP minus the utility allowance is the prorated rent.

## **6.24 FLAT RENTS AND FAMILY CHOICE IN RENTS [24 CFR 960.253 (a) and (e)]**

## **Flat Rents [24 CFR 960.253(b)]**

The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

Policy related to the reexamination of families paying flat rent are located in Chapter 9.

### **Flat Rent Appendix A, adopted June 1, 2015**

The FH hereby amends its flat rent policies to comply with the statutory changes contained within, Public Law 113-76, the Fiscal Year 2014 Appropriation Act.

The FH will set flat rental amount for each public housing unit that complies with the requirement that all flat rents be set at no less than 80 percent of the applicable Fair Market Rent (FMR) adjusted, if necessary, to account for reasonable utilities costs. The new flat rental amount will apply to all new program admissions effective October 1, 2014. For current program participants that pay the flat rental amount, the new flat rental amount will be offered, as well as the income-based rental amount, at the next annual rent option.

The FH will place a cap on any increase in a family's rental payment that exceeds 35 percent, and is a result of changes to the flat rental amount as follows:

- Multiply the existing flat rental payment by 1.35 and compare that to the updated flat rental amount;
- The PHA will present two rent options to the family as follows:
  - the lower of the product of the calculation and the updated flat rental amount; and
  - the income based rent.

When the family elects to pay the flat rent, the flat rent amount quoted to the family by the FH; minus the utility allowance for the dwelling unit, is the amount the family pays. Changes in family income, expenses, or composition will not affect the flat rent amount because it is outside the income-based formula.

### **Family Choice in Rents [24 CFR 960.253(a) and (e)]**

Once each year, the FH must offer families the choice between a flat rent, income-based rent and minimum rent. The family may not be offered this choice more than once a year.

During the annual recertification interview the FH will provide the family with the (LHA form No.19a) Resident's Rent Choice Determination, on which the family will indicate whether they choose flat rent, income-based rent, or minimum rent. The FH rent choice form will state what the flat rent would be, and an estimate, based on current information, what the family's income-based rent would be or the \$50.00 minimum rent (if applicable). The Residents' Rent Choice Determination form will be retained in the resident's file. This information will include the FH's policy on switching from flat rent to income-based rent due to financial hardship.

However, if the family chose the flat rent for the previous year the FH is required to provide an income-based rent amount only in the year that a reexamination of income is conducted or if the family specifically requests it and submits updated income information.

In accordance with PIH Notice 2016-05, Streamline Rule – Public Housing rents for Mixed Families - When the mixed family's TTP is greater than the applicable flat rent, the FH must use the mixed family's TTP to calculate the prorated rent. The mixed family's TTP minus the utility allowance is the prorated rent.

**Switching from Flat Rent to Income-Based Rent Due to Hardship [24 CFR 960.253(f)]**

A family can opt to switch from flat rent to income-based rent at any time if they are unable to pay the flat rent due to financial hardship. If the FH determines that a financial hardship exists, the FH must immediately allow the family to switch from flat rent to the income-based rent.

Upon determination by the FH that a financial hardship exists, the FH will allow a family to switch from flat rent to income-based rent effective the first of the month following the family's request.

Reasons for financial hardship include:

- The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance
- The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items
- Such other situations determined by the FH to be appropriate

FH considers payment of flat rent to be a financial hardship whenever the switch to income-based rent would be lower than the flat rent [PH OCC GB, p. 137].

**Change in Flat Rents**

Changes to flat rents, up or down, will not affect families paying flat rent until their next annual flat rent offer, at which time the family will be given the choice of switching back to income-based rent or of remaining on flat rent at the current (most recently adjusted) flat rent for their unit [PH OCC GB, pp. 137-138].

**Flat Rents and Earned Income Disallowance [A&O FAQs]**

Because the EID is a function of income-based rents, a family paying flat rent cannot qualify for the EID even if a family member experiences an event that would qualify the family for the EID. If the family later chooses to pay income-based rent, they would only qualify for the EID if a new qualifying event occurred.

Under the EID original calculation method, a family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their exclusion period would have the exclusion period continue while paying flat rent as

long as the employment that is the subject of the exclusion continues. A family paying flat rent could therefore see a family member's exclusion period expire while the family is paying flat rent.

Under the EID revised calculation method, a family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their exclusion period would have the exclusion period continue while paying flat rent regardless whether the employment that is the subject of the exclusion continues. A family paying flat rent could therefore see a family member's exclusion period expire while the family is paying flat rent.

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## **CHAPTER 7 – VERIFICATION [24 CFR 960.259, 24 CFR 5.230, NOTICE PIH 2018-18]**

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### **INTRODUCTION**

This chapter explains FH's procedures and standards for verification of preferences, income, assets, allowable deductions, family status, and when there are changes in family members. The FH's verification procedures are designed to meet HUD's requirements that the factors of eligibility and Total Tenant Payment be verified and that the FH maintain program integrity. Applicants and residents must furnish proof of their statements whenever required by the FH, and the information they provide must be true and complete. The FH will ensure that proper authorization for release of information is always obtained from the family before making verification inquiries.

FH will follow the verification guidance provided by HUD in Notice PIH 2018-18 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary FH policies.

In addition, before sending for verification from independent sources, FH will utilize Upfront Income Verifications to verify income and, conduct face-to-face appointments to discuss any discrepancies with the family at the time of the certification interview.

### **PART I: GENERAL VERIFICATION REQUIREMENTS**

#### **7.0 FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 960.259, 24 CFR 5.230]**

The family must supply any information that FH or HUD determines is necessary to the administration of the program and must consent to the FH verification of that information [24 CFR 960.259(a)(1)].

##### **Consent Forms**

It is required that all adult applicants and residents sign form HUD-9886, Authorization for Release of Information. 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 FH 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 sign Consent form [24 CFR 5.232]**

If any family member who is required to sign a consent form fails to do so, FH will deny admission to applicants and terminate the lease of residents. The family may request a hearing in accordance with FH grievance procedures.

## **7.1 ITEMS TO BE VERIFIED [24 CFR 982.516]**

The following is a list of items, which must be verified at the time of initial eligibility.

1. All income both cash and non-cash not specifically excluded by the regulations.  
  
Zero-income applicants and residents will be required to complete a family expense form at each certification or recertification interview when all member(s) is/are reporting zero-income.
2. Full-time student status including high school students who are 18 or over at the time of initial or annual eligibility.
3. Current assets including assets disposed of for less than fair market value in the last preceding two (2) years.
4. Child-care expense where it allows an adult family member to be employed or to further his/her education.
5. Total medical expenses of all family members in households whose head or spouse is elderly or disabled.
6. Disability assistance expenses to include only those costs associated with attendant care or auxiliary apparatus that allow an adult family member to be employed.
7. Disability status for determination of preferences, allowances or deductions.
8. Legal identity of all family members.
9. U.S. citizenship/eligible immigrant status.
10. Social Security Numbers for all family members.
11. "Preference" status based upon FH preferences.
12. Family/marital status when needed for head of household or spouse definition (Refer to Section 7.11).
13. Verification of reduction in benefits for noncompliance in certain programs, such as Welfare to Work sanctions of CalWORKs benefits.
14. The FH will obtain written verification from the welfare agency stating that the family's benefits have been reduced for fraud or noncompliance for determination of imputed income and before denying the family's request for rent reduction.
15. Verification of foster adults/children from the placement agency
16. Verification of being the victim of domestic violence, dating violence, sexual assault or stalking.

17. Verification of participation in a federal, state or local training program that is generating income.

All items above will be verified at annual eligibility with the exception of the following:

1. Legal identity of all family members.
2. U.S. Citizenship/eligibility immigrant status.
3. Social Security Number for all family members.
4. "Preference" status based upon FH preferences.

## **7.2 USE OF HUD'S ENTERPRISE INCOME VERIFICATION (EIV) SYSTEM**

The FH will use HUD's Enterprise Income Verification (EIV) system in its entirety to verify resident's employment, earned income, unemployment benefits, social security (SS), and supplemental security income (SSI) benefits information during mandatory reexaminations of family composition and income in accordance with 24 CFR 5.236.

The EIV system contains two main components: *income reports* and *income discrepancy reports*.

### **EIV Income and IVT Reports**

The data shown on income and income validation tool (IVT) reports is updated quarterly. Data may be between three and six months old at the time reports are generated.

The FH will obtain income and IVT reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.

Income and IVT reports will be compared to family-provided information as part of the annual reexamination process. When the family does not dispute the EIV data, income reports may be used to meet the regulatory requirement for third-party verification.

Income and IVT reports will be used in interim reexaminations when necessary to verify employment income, unemployment benefits, and SS/SSI benefits and to verify that families claiming zero income are not receiving income from any of these sources.

Income and IVT reports will be retained in resident files with the applicable annual or interim reexamination documents.

When the FH determines through EIV reports and independent third-party verification that a family has concealed or underreported income, corrective action will be taken pursuant to the policies in Chapter 15, "Program Integrity."

### **Income Validation Tool (IVT) [PIH Notice 2018-18]**

The Income Validation Tool (IVT) is a tool for identifying families that may have concealed or underreported income. Data in the IVT report represents income for past reporting periods and may be between 6 and 36 months old at the time the report is

generated.

Families that have not concealed or underreported income may appear on the IVT report in some circumstances, such as loss of a job or addition of new family members.

The FH will generate and review IVT monthly. The IVT report threshold percentage will be adjusted as necessary based on the findings in the IVT.

In reviewing IVT, FH will begin with the largest discrepancies.

When the FH determines that a resident appearing on the IVT report has not concealed or underreported income, the resident's name will be placed on a list of "false positive" reviews. To avoid multiple reviews in this situation, residents appearing on this list will be eliminated from IVT processing until a subsequent interim or annual reexamination has been completed.

When it appears that a family may have concealed or underreported income, FH will request independent third party written verification of the income in question.

When FH determines through IVT review and independent third-party verification that a family has concealed or underreported income, corrective action will be taken pursuant to the policies in Chapter 15, "Program Integrity."

#### **EIV Identity Verification**

The EIV system verifies resident identities against Social Security Administration (SSA) records. These records are compared to Public and Indian Housing Information Center (PIC) data for a match on social security number, name, and date of birth.

FH is required to use EIV's Identity Verification Report on a Monthly basis to improve the availability of income information in EIV [Notice PIH 2018-18].

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

FH will identify residents whose identity verification has failed as part of the annual reexamination process.

FH will identify residents whose identity verification has failed by reviewing EIV's Identity Verification Report on a monthly basis. FH will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the resident. When FH determines that discrepancies exist as a result of FH errors, such as spelling errors or incorrect birth dates, it will correct the errors immediately.

### **7.3 HUD'S VERIFICATION HIERARCHY [NOTICE PIH 2018-18]**

FH will access the EIV system and obtain an *Income Report* for each household during their recertification process on a monthly basis. FH will maintain the *Income Report* in the resident file along with the form HUD-50058 and other supporting documentation to support income and rent determination for all mandatory annual reexamination of family

income and composition.

*Income and IVT reports* will be compared to family-provided information as part of the annual reexamination process. When the family does not dispute the EIV data, income reports may be used to meet the regulatory requirement for third-party verification.

*Income and IVT reports* will be used in interim reexaminations when necessary to verify employment income, unemployment benefits, and SS/SSI benefits and to verify that families claiming zero income are not receiving income from any of these sources.

If the *Income Report* does not contain any employment and income information for the family, the FH will attempt the next lower level verification technique, as noted in the chart below.

Level	Verification Technique	Ranking
6	<b>Upfront Income Verification (UIV)</b> using HUD's Enterprise Income Verification (EIV) system and Income Validation Tool (IVT) (not available for income verifications of applicants)	<b>Highest</b> (Mandatory)
5	Upfront Income Verification (UIV) using non-HUD system	<b>Highest</b> (Optional)
4	Written Third Party Verification	<b>High</b> (Mandatory to supplement EIV- reported income sources and when EIV has no data; (mandatory)-for non-EIV reported income sources;(mandatory) when resident disputes EIV-reported employment and income information <b>and</b> is unable to provide acceptable documentation to support the dispute)
3	Written Third Party Verification form	<b>Medium-Low</b> (Mandatory if written third party verification documents are not available or rejected by FH; and when the applicant or resident is unable to provide acceptable documentation)
2	Oral Third Party Verification form	<b>Low</b> (Mandatory if written third party verification is not available)
1	Resident Declaration	<b>Low</b> (Use as a last resort when unable to obtain any type of third party verification)

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**Note:** This verification hierarchy applies to income determinations for applicants and participants. However, EIV is not available for verifying income of applicants.

### **Verification Techniques Definitions**

#### ***Upfront Income Verification (UIV) (Level 6/5):***

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 number of individuals.

EIV system is available to all PHAs as a UIV technique. FH will continue using other non-HUD UIV tools, such as The Work Number (an automated verification system) and state government databases, to validate resident-reported income.

#### ***Written Third Party Verification [Notice PIH 2018-18] (resident-provided documents) (Level 4):***

An original or authentic document generated by a third party source dated either within 60-day period preceding the reexamination or FH request date. Such documentation may be in the possession of the resident (or applicant), and is commonly referred to as *resident-provided documents*. Since it is HUD's position that such *resident-provided documents* are written third party verification since these documents originated from a third party source. FH will, at its discretion, reject any resident-provided documents and follow up directly with the source to obtain necessary verification of information. Current acceptable resident-provided documents must be used for income and rent determinations.

FH will obtain at a minimum, two current and consecutive pays stubs for determining annual income from wages. For new income sources or when two stubs are not available, FH will project income based on the information from a traditional written third party verification form or the available information. Documents older than 60 days from FH interview/determination or request date is acceptable for confirming effective dates of income.

#### ***Written Third Party Verification Form (Level 3):***

Is the traditional third party verification that is mailed, faxed, or emailed to a third party resource. It is HUD's position that the administrative burden and risk associated with use of the traditional third party verification form will be reduced by FH relying on acceptable documents that are generated by a third party, but in the possession of and provided by the resident or applicant. Many of the documents in the possession of the resident or applicant are derived from third party sources (i.e. employers, federal, state and/or local agencies, banks, etc.). FH will rely on documents that originate from a third party source's computerized system and/or database, as this process reduces the likelihood of incorrect or falsified information being provided on the third party verification request form.

#### ***Oral-Third-Party verification [Notice PIH 2018-18] (Level 2):***

When oral-party verification is used, staff will note with whom they spoke, the date of the conversation, and the facts provided. FH will use this method of verifying a resident or

applicants source of income in the event that the independent source does not respond to FH's faxed, mailed, or e-mailed request for income verification within 10 business days.

***Resident Declaration (Level 1):***

In the event that third-party written or oral verification is unavailable, or the documents cannot be verified by a third party within four weeks, FH will accept an affidavit or notarized statement of reported income and/or expenses from the resident or applicant.

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

## **7.4 METHODS OF INCOME VERIFICATION AND TIME ALLOWED**

FH will verify information provided by applicants and residents utilizing the following verification methods:

1. **Up-Front Income Verification (UIV) (Level 5/6):** FH will use HUD's Enterprise Income Verification (EIV) system in its entirety to verify resident employment, earned income, unemployment benefits, social security (SS), and supplemental security income (SS) benefits information during annual or interim certifications to substantiate claims made by an applicant or resident. If the institution providing the UIV report charges the resident, FH will utilize the next income verification method.
2. **Third-Party Written Verification (*resident-provided documentation*) (Level 4):** Since it is HUD's position that such *resident/applicant-provided documents* are written third party verification since these documents originated from a third party source. FH will review documents, when relevant, to substantiate the claim of an applicant or resident. Examples of acceptable resident/applicant-provided documentation (generated by a third party source) include, but are not limited to:
  - (a) Pay stubs, payroll summary report
  - (b) Employer notice/letter of hire/termination
  - (c) SSA award letter S
  - (d) Bank Statements
  - (e) Child Support court order/payment stubs/or other supporting documents
  - (f) Welfare Benefit Letter and/or printouts
  - (g) Unemployment award letter or paystubs
3. **Third-Party Written Verification (Level 3):** FH will request written third party verification under the following circumstances:
  - a) When the resident disputes the EIV information and is unable to provide acceptable documentation to support his/her dispute (24 CFR 5.236 (b));

- b) When FH requires additional information that is not available in EIV and/or the resident is unable to provide FH with current acceptable resident-provided documentation. Examples of additional information, includes but is not limited to:
- Effective dates of income (i.e. employment, unemployment compensation, or social security benefits)
  - For new employment; pay rate, number of hours worked per week, pay frequency, etc.
  - Confirmation of changes in circumstances (i.e. reduced hours, reduced rate of pay, temporary leave of absence. etc.)
- c) **Third-Party Information is Late:** When third-party written verification has been requested and the timeframes for submission have been exceeded, FH will use the information from documents on a provisional basis. If FH later receives third-party written verification that differs from the amounts used in income and rent determinations and it is past the deadline for processing the reexamination, FH will conduct an interim reexamination to adjust the figures used for the reexamination, regardless of FH's interim reexamination policy.
4. **Oral Third Party Verification (Level 2):** FH will make a minimum of two attempts, to obtain oral third-party verification when the independent source does not respond to FH's faxed, mailed, or e-mailed request for income within ten (10) business days. FH will use any information provided orally in combination with reviewing applicant/resident-provided documents. FH staff will document in the resident file, the date and time of the telephone call (or visit to the third party) the name of the person contacted and telephone number, along with the confirmed information.
5. **Resident/Applicant Declaration (Level 1):** The resident/applicant submits an affidavit or notarized statement of reported income and/or expense to FH. This method will be used as a last resort when FH has not been successful in obtaining information via all other verification techniques. FH will document in the resident file why third party written verification was not available.

FH will not delay the processing of an application beyond two weeks in cases where third party written verification is not received by FH in a timely manner.

Third-Party written Verification for applicants may not be more than 120 days old at the time of a unit offer. For residents, they are valid for 120 days from date of receipt.

### **Exceptions to Third Party Verification Requirements (PIH 2018-18))**

HUD is aware that in some situations, third party verification is not available for a variety of reasons. Oftentimes, the PHA may have made numerous attempts to obtain the required verification with no success, or it may not be cost effective to obtain third party verification of income, assets, or expenses, when the impact on total tenant payment is minimal. In these cases, the PHA **is required to document in the family file the reason(s) why third party verification was not available.**

## 7.5 VERIFICATION OF INCOME

This section defines the methods FH will use to verify various types of income. Whenever “in this order” is used in this chapter, FH will request and utilize verifications, if available, in the order specified.

### **Employment Income**

Written Verification forms request the employer to specify the:

- Dates of employment
- Amount and frequency of earnings
- Expected Change in employment status
- Year-to-date earnings (attach wage printout)
- Anticipated unpaid time off

### **Date of the last pay increase**

The likelihood of change of employment status and effective date of any known salary increase during the next 12 months; year-to-date earnings; estimated income from overtime, tips, bonus pay expected during the next 12 months.

Acceptable methods of verification include, in this order:

1. Employment verification form completed by the employer.
2. Check stubs or earning statements, which indicate the employee's gross pay, frequency of pay or year to date earnings for the past 12 months.
3. W-2 forms plus signed income tax return forms.
4. Income tax returns signed by the family may be used for verifying self-employment income, or income from tips and other gratuities.

Applicants and residents may be requested to sign an authorization for release of information from the Internal Revenue Service for further verification of income.

In cases where there are questions about the validity of information provided by the family, the FH will require the most recent signed federal income tax forms.

### **Tips**

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.

### **Social Security, Pensions, Supplemental Security Income (SSI), Disability Income**

For policies governing streamlined determinations for fixed sources of income, please see Chapter 9 (Standards for continued Occupancy & Reexaminations).

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

To verify the SS/SSI benefits of residents, the FH will obtain information about social security/SSI benefits through HUD's EIV system, and confirm with the resident(s) that the current listed benefit amount is correct. If the resident disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, the FH will request a current SSA/SSI benefit verification letter from each family member that receives social security benefits. If a family member is unable to provide the document, the FH will help the resident request a benefit verification letter from SSA's Web site at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. Once the family has received the original benefit verification letter, it will be required that the family provide the letter to the FH.

### **Unemployment Compensation**

Acceptable methods of verification include, in this order:

1. Current award letter dated within 60 days of interview, electronically obtained or in hard copy, stating weekly benefit amounts.
2. Third party request to the unemployment compensation agency by FH.
3. Payment stubs.

### **Welfare Payments or General Assistance**

Acceptable methods of verification include, in this order:

1. Current benefit letter dated within 60 days of interview, electronically obtained or in hard copy, stating monthly benefit amounts.
3. Computer-generated Notice of Action.

### **Alimony or Child Support Payments**

Acceptable methods of verification include, in this order:

1. Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules or,
2. A notarized letter from the persons paying the support or,
3. 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 or,
4. If payments are irregular, the family must provide appropriate court or welfare

agency documents supporting the family's claim that the amount they are actually receiving is less child support/alimony than was ordered.

### **Net Income from a Business**

In order to verify the net income from a business, the FH will view IRS and financial documents from prior years and use this information to anticipate the income for the next 12 months.

Acceptable methods of verification, in this order, include:

1. Signed IRS Form 1040, including:

Schedule C (Small Business)

Schedule E (Rental Property Income)

Schedule F (Farm Income)

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.

2. Audited or unaudited financial statement(s) of the business.
3. Documents such as cashbooks, bank statements, and receipts will be used as a guide for the prior six months (or lesser period if not in business for six months) to project income after deducted expenses for the next 12 months. The family will be advised to maintain these documents in the future if they are not available.

### **Child Care Business**

If an applicant/resident is operating a licensed day care business, income will be verified as with any other business.

If the applicant/resident is operating a "cash and carry" operation (licensed or not), the FH will require the applicant/resident to complete a form for each customer giving: name of person(s) whose child(ren) is/are being cared for, phone number, number of hours child is being cared for, method of payment (check/cash), amount paid, and signature of person.

If the family has filed a tax return, the family will be required to provide it.

### **Recurring Gifts**

Acceptable methods of verification include, in this order:

1. Written 3<sup>rd</sup> party verification of Recurring Gift form completed by the person providing the recurring gift.
2. Oral 3<sup>rd</sup> party verification completed by FH, that includes the following information:
  - Gross monthly gift amount
  - Name of person providing gift
  - Relationship to applicant/tenant
  - Any changes to gross monthly amount expected within the next 12 months
  - Documented date of oral clarification

3. Resident written declaration that includes the following information:
  - Gross monthly gift amount
  - Name of person providing gift
  - Relationship to applicant/tenant
  - Any changes to gross monthly amount expected within the next 12 months
  - Signed and dated by tenant

### **Zero-Income Status**

FH will employ the use of the EIV process (e.g., CALWORKS, EIV, EDD work history) and other written third party sources when the family claims to have no other income.

EIV Income reports will be used in interim reexaminations when necessary to verify employment income, unemployment benefits, and SS/SSI benefits to verify that families claiming zero income are not receiving income from any of these sources.

Families are required to complete the FH Zero Income certification form as to how they are meeting living expenses, such as utilities, food, clothing, and other incidentals, when they claim zero income and provide written statements from individuals or sources providing such items.

FH will request information from the State Employment Development Department.

### **Full-Time Student Status**

Only the first \$480 of the earned income of full time students 18 years of age or older, other than head or spouse, will be counted towards family income.

Financial aid, scholarships and grants received by full time students is not counted towards family income.

Verification of full time student status includes:

- Written verification from the registrar's office or other school official.
- School records indicating enrollment for sufficient number of credits to be considered a full-time student by the educational institution.

## **7.6 INCOME FROM ASSETS**

FH may accept a family's declaration if the amount of assets is equal to or less than \$5,000. Each adult family member can complete and sign the 'under \$5,000 Asset Certification' form as it can serve as the declaration.

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

Acceptable methods of third-party verification include, in this order:

### **Savings Account Interest Income and Dividends**

1. Account statements, passbooks, certificates of deposit, or FH written verification forms completed by the financial institution.
2. Broker's statements showing value of stocks or bonds and the earnings credited to the family. Earnings can be obtained from quotations or oral broker's verification.
3. IRS Form 1099 from the financial institution, provided that the FH must adjust the information to project earnings expected for the next 12 months.

#### **Interest Income from Mortgages or Similar Arrangements**

1. A letter from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for next 12 months. (A copy of the check paid by the buyer to the family is not sufficient unless a breakdown of interest and principal is shown.)
2. Amortization schedule showing interest for the 12 months following the effective date of the certification or recertification.

#### **Net Rental Income from Property Owned by Family**

1. Attached a signed IRS Form 1040 with Schedule E (Rental Income)
2. Copies of latest rent receipts, leases, or other documentation of rent amounts.
3. Documentation of allowable operating expenses of the property: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.
4. Lessee's written statement verifying rent payments to the family and family's notarized statement as to net income realized.

### **7.7 VERIFICATION OF ASSETS**

#### **Family Assets**

FH will require the necessary information to determine the current cash value, (the net amount the family would receive if the asset were converted to cash).

FH is required to verify all assets for applicants and will not accept a self-certification declaration.

FH will accept a family's declaration of the amount of assets if equal to or less than 5,000. However, FH is required to verify resident's assets at least every 3 years. Verification forms, letters, or documents from a financial institution or broker.

1. Passbooks, certificates of deposit, bonds, or financial statements completed by a financial institution or broker.
2. In determining the value of a checking account, the FH will use the average monthly balance for the last six months;
3. In determining the value of a savings account, the FH will use the current balance.
4. Quotes from a stockbroker or realty agent as to the net amount family would receive if they liquidated securities or real estate.

5. Real estate tax statements if the approximate current market value can be deducted from assessment.
6. Financial statements for business assets.
7. Copies of closing documents showing the selling price and the distribution of the sales proceeds.
8. Appraisals of personal property held as an investment.
9. Family has notarized Statement describing assets or cash held at the family's home or in safe deposit boxes.

#### **Assets Disposed of for Less than Fair Market Value (FMV)**

For all Certifications and Recertification's, the Family will certify as to whether any member has disposed of assets for less than fair market value during the two years preceding the effective date of the certification or recertification.

If the family certifies that they have disposed of assets for less than fair market value, written verification [or certification] is required that shows: (a) all assets disposed of for less than FMV, (b) the date they were disposed of, (c) the amount the family received, and (d) the market value of the assets at the time of disposition. Third party written verification will be obtained wherever possible.

### **7.8 VERIFICATION OF ALLOWABLE DEDUCTIONS FROM INCOME**

#### **Child Care Expenses**

Written verification from the person who receives the payments is required. If the childcare provider is an individual, s/he must provide a statement of the amount they are charging the family for their services.

Verifications must specify the child care provider's name, address, telephone number, the names of the children cared for, the number of hours the child care occurs, the rate of pay, and the typical yearly amount paid, including school and vacation periods.

Family's certification as to whether any of those payments have been or will be paid or reimbursed by outside sources.

Typical verification for child-care expenses include but is not limited to: signed income tax records, money orders to the child care provider, or cancelled checks.

#### **Medical and Disabled Assistance Expenses**

Families who claim medical expenses or expenses to assist a person(s) with disability will be required to submit a certification as to whether or not any expense payments have been, or will be, reimbursed by an outside source. All expense claims will be verified by one or more of the methods listed below:

- Written verification by a doctor, hospital or clinic personnel, dentist, pharmacist, of (a) the anticipated medical costs to be incurred by the family and regular payments due on Medical bills; and (b) if those expenses will be reimbursed by insurance or a government agency.

- Written confirmation by the insurance company or employer of health insurance premiums to be paid by the family.
- Written confirmation from the Social Security Administration's of Medicare premiums to be paid by the family over the next 12 months. A computer printout will be accepted.

For attendant care:

- A reliable, knowledgeable professional's certification that the assistance of an attendant is necessary as a medical expense and a projection of the number of hours the care is needed for calculation purposes.
- Attendant has written confirmation of hours of care provided and amount and frequency of payments received from the family or agency (or copies of canceled checks the family used to make those payments) or payment stubs from the agency providing the services.
- Receipts, canceled checks, or pay stubs that verify medical costs and insurance expenses likely to be incurred in the next 12 months.
- Copies of payment agreements or most recent invoice that verify payments made on outstanding medical bills that will continue over all or part of the next 12 months.
- Receipts or other record of medical expenses incurred during the past 12 months that can be used to anticipate future medical expenses. FH may use this approach for "general medical expenses" such as prescription drugs and regular visits to doctors or dentists, but not for one-time, nonrecurring expenses from the previous year.
- FH will use mileage at the IRS's rate, or cab, bus fare, or other public transportation cost for verification of the cost of transportation directly related to medical treatment.

### **Assistance to Persons with Disabilities**

In All Cases: Written certification from a reliable, knowledgeable professional that the person with disabilities requires the services of an attendant and/or the use of auxiliary apparatus to permit him/her to be employed or to function sufficiently independently to enable another family member to be employed.

Family's certification as to whether they receive reimbursement for any of the expenses of disability assistance and the amount of any reimbursement received.

Attendant Care: Attendant's written certification of amount received from the family, frequency of receipt, and hours of care provided. Certification of family and attendant and/or copies of canceled checks family used to make payments.

Auxiliary Apparatus: Receipts for purchases or proof of monthly payments and maintenance expenses for auxiliary apparatus.

In the case where the person with disabilities is employed, a statement from the

employer that the auxiliary apparatus is necessary for employment will be required.

NOTE: Disability expenses are allowable deductions only if the expenses enable a member of the household age 18 and over (including the disabled member) to go to work.

## **Part II: Verifying FAMILY INFORMATION**

### **7.9 VERIFICATION OF LEGAL IDENTITY**

In order to prevent program abuse, FH will require applicants to furnish verification of legal identity for all family members.

The documents listed below will be considered acceptable verification of legal identity for adults. If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required.

1. Certificate of birth, naturalization papers
2. Current, valid driver's license
3. Current, valid State issued ID card
4. U.S. military discharge (DD 214)
5. U.S. passport

Documents considered acceptable for the verification of legal identity for minors may be one or more of the following:

1. Certificate of birth
2. Adoption papers
3. Custody agreement

### **7.10 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.

If an official record of birth or evidence of social security retirement benefits cannot be provided, FH 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.

Age must be verified only once during continuously assisted occupancy.

### **7.11 FAMILY RELATIONSHIPS**

Applicants and residents are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are

provided in (Chapter 3 Eligibility and Suitability for Admission to Public Housing).

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.

#### **Verification of Marital Status**

- Verification of divorce status will be a certified copy of the divorce decree, signed by a Court Officer.
- Verification of a separation may be a copy of court-ordered maintenance or other records.
- Verification of marriage status is a marriage certificate.

#### **Familial Relationships**

Certification will normally be considered sufficient verification of family relationships. In cases where reasonable doubt exists, the family may be asked to provide verification.

The following verifications will be required if certification is insufficient:

- Verification of relationship:
  - Official identification showing name
  - Birth certificates
- Verification of guardianship:
  - Court-ordered assignment
  - Affidavit of parent
  - Verification from social services agency
  - School records
- Evidence of an established family relationship:
  - Joint bank accounts or other shared financial transactions
  - Leases or other evidence of prior cohabitation (utility bills)
  - Credit reports showing relationship

#### **Verification of Permanently Absent Adult Member**

If an adult member who was formerly a member of the household is reported permanently absent by the family, FH will consider any of the following as verification:

- Husband or wife institutes divorce action.
- Husband or wife institutes legal separation.
- Order of protection/restraining order obtained by one family member against another.

- Proof of another home address, such as utility bills, canceled checks for rent, driver's license, lease or rental agreement, if available.
- Statements from other agencies such as social services that the adult family member is no longer living at that location.
- If the adult family member is incarcerated, a document from the Court or prison should be obtained stating how long they will be incarcerated.

### **Verification of Change in Family Composition**

FH will verify changes in family composition (either reported or unreported) through letters, telephone calls, leases, utility records, inspections, landlords, neighbors, credit data, school or DMV records, and other sources. Verification of legal custody must be a court-ordered assignment or verification from a social service agency.

### **Verification of Disability**

Verification of disability must be receipt of SSI or SSA disability payments under Section 223 of the Social Security Act or 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7) or verified by appropriate diagnostician such as physician, psychiatrist, psychologist, therapist, rehabilitation specialist, or licensed social worker, using the HUD language as the verification format. If FH gets written certification that the disability is permanent, FH will only require documentation of disability one time.

### **Verification of Citizenship/Eligible Immigrant Status [24 CFR 5.508]**

To be eligible for assistance, individuals must be U.S. citizens or eligible immigrants. Individuals who are neither, may elect not to contend their status. Eligible immigrants must fall into one of the categories specified by the regulations and must have their status verified by Immigration and Naturalization Service (INS). Each family member must declare his or her status once. Assistance to a resident cannot be delayed, denied, or terminated while verification of status is pending. Assistance to applicants may be delayed while the FH hearing is pending.

Citizens or Nationals of the United States are required to sign a declaration under penalty of perjury and provide documentation of citizenship.

Acceptable documents will include at least one of the following original documents:

- United States passport
- Resident alien/registration card
- Social Security card
- REAL ID or REAL Driver's License
- Other appropriate documentation as determined by FH

Eligible Immigrants who were residents and 62 or over on June 19, 1995, are required to sign a declaration of eligible immigration status and provide proof of age.

Non-citizens with eligible immigration status must sign a declaration of status and verification consent form and provide their original immigration documents, which are copied front and back and returned to the family. The FH verifies the status through the INS SAVE system. If this primary verification fails to verify status, FH must request within ten days that the INS conduct a manual search.

Family members who do not claim to be citizens or eligible immigrants must be listed on a statement of non-contending family members signed by the head of household or spouse.

Non-citizen students on student visas are ineligible members even though they are in the country lawfully. They must provide their student visa but their status will not be verified and they do not sign a declaration but are listed on the statement of non-contending members.

**Failure to Provide:** If an applicant or resident family member fails to sign required declarations and consent forms or provide documents, as required, they must be listed as an ineligible member. If the entire family fails to provide and sign as required, the family may be denied or terminated for failure to provide required information.

**Time of Verification:** For applicants, verification of U.S. citizenship/eligible immigrant status occurs at the same time as verification of other factors of eligibility for final eligibility determination. For resident families, it is done at the first regular recertification after June 19, 1995. For family members added after other members have been verified, the verification occurs prior to the new member moving in. Once verification has been completed for any covered program, it need not be repeated.

**Extensions of Time to Provide Documents:** FH will grant an extension of 10 calendar days for families to submit evidence of eligible immigrant status.

**Acceptable Documents of Eligible Immigration:** [24 CFR 5.510 (b)] Acceptable evidence of eligible immigration status shall be the original of a document designated by INS as acceptable evidence of immigration status in one of the six categories mentioned in § 5.506(a) for the specific immigration status claimed by the individual. Such documents include the following unless changes are published in the Federal Registry or designated by INS.

Resident Alien Card (I-551)

Alien Registration Receipt Card (I-151)

Arrival-Departure Record (I-94)

Employment Authorization Card (I-766) (\*Note October 1, 2006, USCIS eliminated use of I-688, I-688A and I-688B)

Receipt issued by the INS for issuance of replacement of any of the above documents that shows individual's entitlement has been verified

A birth certificate alone is not acceptable verification of status. All documents in connection

with U.S. citizenship/eligible immigrant status must be kept five years.

## **7.12 VERIFICATION OF SOCIAL SECURITY NUMBERS [24 CFR 5.216 AND PIH 2018-24]**

### **SSN Disclosure**

All members of the household must supply SSNs as part of HUD's mandatory income matching program, with the following exceptions:

Individuals exempt from disclosure:

1. Individuals who do not contend to have eligible immigration status
2. Residents age 62 or older as of 01/31/2010
3. Residents who have previously disclosed a valid SSN

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

### **Acceptable SSN Documentation**

- An original SSN card issued by the Social Security Administration (SSA) (Refer to PIH Notice 2018-24, Section 6 for a description of the three types of SS cards that SSA issues.)
- An original SSA-issued document with the individual's name and SSN
- An original document issued by a federal, state, or local government agency which contains the name and SSN of the individual
- SSA benefit award letter
- Retirement benefit letter
- Life insurance policy
- Court records

### **Rejection of Documentation**

FH may not reject documentation of an SSN unless it

- Is not original,
- It does not appear to be authentic,
- It is not legible, or
- It has been altered or mutilated.
- If the document appears to be forged.

In such cases FH should explain the reason for the rejection and request that acceptable documentation be provided within ten business days of the request date.

### **Verification of the SSN**

After the FH has obtained acceptable documentation of an individual's SSN under the normal certification timelines, the FH must;

- Make a copy of it for the resident file;

- Record the SSN on line “3n” of form HUD-50058; and
- Transmit the form to HUD at the time the certification is transmitted in PIC.

Verification of acceptable documents and timely transmission of the HUD-50058 will be monitored monthly by HMD management/designated staff.

After HUD validates the SSN through its computer-matching program with SSA, the designated staff should destroy the copy that was made of the SSN documentation and replace it with the household’s Summary Report no later than the next annual reexamination. This encourages minimizing the risk of exposing an individual’s SSN to theft or misuse by minimizing the number of records that display the individual’s full nine-digit SSN. The report is confirmation of compliance with the new SSN disclosure, documentation, and verification requirements.

FH will retain EIV reports in resident files “for the duration of tenancy” and up to three years after program participation ends.

#### **Individuals without an Assigned SSN**

Citizens and lawfully present noncitizens who state that they have never been assigned an SSN by the SSA will make such declaration in writing and under penalties of perjury to FH. FH will maintain the declaration in the resident file “for the duration of tenancy” and up to three years after program participation ends.

FH will use the Alternate ID generator within PIC to generate a unique identifier number for those individuals who do not have or are unable to disclose a SSN. Once an individual discloses a SSN, FH will delete the Alternate ID, enter the SSN on line “3N” of the form HUD-50058, and transmit the form HUD-50058 to HUD by the certification effective date.

#### **Addition of a New Household Member**

When a participant requests to add a new household member, who is six years of age or under six and has an assigned SSN, the family

- Must disclose the SSN and provide documentation of the SSN to FH at the time of request to add the new household member. The new household member cannot be added to the family composition until the family has complied with the SSN disclosure and verification requirements.

Children under age six without an assigned SSN may be added, with a grace period of 90 days to provide SSN documentation. FH may extend the period for an additional 90 days (for a total of 180 days) if FH, in its discretion, determines that the participant’s failure to comply was due to unforeseen circumstances outside the control of the head of household which prevented timely disclosure of required documentation. Examples include but are not limited to: delayed processing of SSN application by SSA, natural disaster, fire, death in family, etc.

#### **Disclosure of Participants Newly Assigned SSN**

If the participant or any new member of the participant’s household has been assigned a new SSN, the participant must disclose the new SSN at the earlier of:

- Next interim reexamination, or

- Next regularly scheduled reexamination, or moving reexamination.

### **Penalties for Failure to Disclose SSN**

In accordance with 24 CFR 5.218, the following penalties apply for noncompliance with the SSN disclosure and documentation requirements:

#### **Participants**

If a program participant who is required to meet the new requirements fails to meet them within a specified time frame (including any extension), FH must terminate the assistance and/or tenancy of the participant's entire household.

However, an exception to required termination of assistance may be granted by FH, if in its discretion, it determines that there were unforeseen circumstances beyond the participant's control. In such cases FH will allow up to an additional 90 days to disclose the SSN.

If the family is unable to comply with the requirements by the specified deadline, FH must terminate the tenancy or assistance, or both of the entire family.

The FH must deny admission or terminate the family's tenancy or assistance, or both, if the family submits falsified SSN documentation.

### **Non-Contending Members without a SSN**

The new rules do not apply to persons not here legally who have signed or will sign a non-contending form.

## **7.13 VERIFICATION OF SUITABILITY FOR ADMISSION**

Sources to be used to determine suitability include but are not limited to:

- Criminal History Reports
- Prior landlord references
- Physicians, social workers, and other health professionals
- Debts owed to FH and Other Housing Authorities (See Chapter 3 Eligibility and Suitability for Admission to Public Housing).

### **Ability to Meet Financial Obligations Under the Lease**

All applicants may be subject to the following procedures to ensure their ability to meet financial obligations under the lease:

- All applicants may be interviewed and asked questions about the basic elements of tenancy.

- FH may access a Credit Report on all applicants prior to admission
- FH may independently verify the rent-paying history of all applicants directly from previous landlord(s).

### **Drug-Related or Violent Criminal Activity**

FH will complete a check of all adult members of the household initially and annually.

### **Housekeeping**

FH may obtain references from prior landlords to determine acceptable housekeeping standards.

The FH may conduct a home visit prior to admission.

## **7.14 VERIFICATION OF INTEREST LIST PREFERENCES [24 CFR 5.410, 5.415, 5.430]**

### **Local Preferences**

Residency preference: For families, who live, work, have been hired to work, or have an adult member that is currently enrolled in an institution of higher education in the jurisdiction of FH.

In order to verify that an applicant is a resident, FH will require any of the following documents: rent receipts, leases, utility bills, employer or agency records, school records, drivers licenses, voters registration records, credit reports, statement from household with whom the family is residing.

Veteran's preference: This preference is available to current members of the U.S. Armed Forces, veterans, or surviving spouses of veterans.

FH will require a DD214 or other U.S. government document that indicates the applicant qualifies under the above definition.

### **Limited Preferences**

Displacement Referral: This preference is subject to the approval of the Executive Director. FH may distribute application forms and may issue a voucher subject to availability to families or single persons that are referred by local governmental officials. The types of referrals that will be considered include, but are not limited to:

- Persons displaced as the result of a government-declared natural disaster
- Persons displaced as the result of governmental action
- Victims under VAWA Reauthorization Act of 2013
- Victims under witness protection programs

Referrals must be made in writing, on governmental letterhead, and signed by the

requesting official and his or her immediate supervisor. Eligibility, including background checks, will be confirmed for all members.

#### **7.15 VERIFICATION OF VAWA STATUS**

FH will request that an individual certify via Form HUD-5382, "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation", that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking, regardless of sex, gender identity, or sexual orientation, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in Public Law 109-162 referencing amendments made to Section 6 of the United States Housing Act of 1937 (42 U.S.C. 1437d); Such certification shall include the name of the perpetrator. FH will request the certification in writing and require that the resident come into the management office to pick up HUD Form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking". The individual shall provide such certification within 14 business days after the individual receives HUD Form 5382, "Certification of Domestic Violence, Dating Violence, or Stalking". If the individual does not provide the certification within 14 days of receiving the form, nothing in this subsection, or in paragraphs (5) or (6) of subsection (1) in Public Law 109-162, may be construed to limit the authority of FH to evict any resident that commits violations of the Public Housing Lease Agreement. At the discretion of the FH, the 14-day deadline may be extended.

An individual may also satisfy the certification requirement by producing a Federal, State, tribal, territorial, or local police or court record. FH will not demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, sexual assault, or stalking in order to receive any of the benefits provided in this section. At the discretion of FH, an individual may be provided benefits based solely on the individual's statement or other corroborating evidence. (Refer to Chapter 3 Eligibility & Suitability for Admission and Chapter 13 Lease Termination).

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## CHAPTER 8 LEASING AND INSPECTIONS [24 CFR 966.4]

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### INTRODUCTION

All units must be occupied pursuant to a Resident Lease Agreement that complies with HUD's regulations [24 CFR Part 966]. This chapter describes FH policies pertaining to lease execution, terms of Lease Agreement, security deposits, rent payments, inspection of units, and additions to the lease.

An eligible family may occupy a public housing dwelling unit under the terms of a lease. The lease must meet all regulatory requirements, and must also comply with applicable state and local laws and codes.

FH has adopted the smoke-free policy, which must be implemented no later than July 18, 2018. The Smoke Free policy is attached as Exhibit 23-1.

This chapter is divided into two parts as follows:

**Part I: Leasing.** This part describes pre-leasing activities and FH policies pertaining to lease execution, modification, and payments under the lease.

**Part II: Inspections.** This part describes FH policies for inspecting dwelling units.

### PART I: LEASING

#### 8.0 LEASE ORIENTATION

Upon execution of the lease, FH will conduct a lease orientation with all adult members of the household. All adult family members must attend an orientation before taking occupancy of the unit.

Families will be provided with the following information during the lease orientation:

- A copy of FH's Resident Lease Agreement and all applicable addenda
- A copy of the Grievance Procedures
- A copy of the House Rules
- A copy of the signed release forms
- A copy of Parking Policy, if applicable
- Information on the Privacy Act
- A copy of the Fair Housing Booklet
- A copy of the FH Pet Policy, if applicable
- A schedule of FH maintenance labor charges and item charges

- A copy of the form HUD-5380, VAWA Notice of Occupancy Rights
- A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence Sexual Assault, or Stalking
- A copy of FH's Smoke Free Policy
- After Hours contact information
- Lock Box information
- Lead Based Paint Disclosure
- Community Service Policy
- Proposition 65

Topics to be discussed will include, but are not limited to:

- Applicable deposits and other charges
- Provisions of the Resident Lease Agreement and applicable addenda
- Orientation to the community
- Unit maintenance and work orders
- The PHA's interim reporting requirements
- Review and explanation of occupancy forms
- Family choice of rent
- VAWA protections
- Smoke-free policy
- Housekeeping standards

## **8.1 TERM OF LEASE AGREEMENT**

The term of the lease must be for a period of 12 months. The lease will be renewed automatically for another 12-month term, unless good cause exists not to renew the lease. FH will not renew the lease if the family has violated the community service requirement [24 CFR 966.4(a)(2)].

## **8.2 EXECUTION OF LEASE [24 CFR 966.4(A)(3)]**

The lease shall be executed by the head of household, spouse, and all other adult members of the household, and by an authorized representative of FH, prior to occupancy.

An appointment will be scheduled for the parties to execute the lease. One executed copy

of the lease will be given to the resident, and FH will retain the original in the resident's file. The lease is incorporated into this policy by reference. The lease document will reflect current FH policies as well as applicable Federal, State and Local law.

The following provisions govern lease execution and amendments:

- A new lease is only executed at initial occupancy, if the family moves to a different unit, or at the annual certification if the signed lease is not the most current.

If a resident transfers from one FH unit to another without a change in recertification date.

The names, date of birth of all household members, and masked social security numbers are listed on the lease at initial occupancy and on the Personal Declaration Application each subsequent year. Only those persons listed on the most recent certification shall be permitted to occupy a dwelling unit.

Changes to resident rents are made upon the preparation and execution of a "Notice of Rent Determination" by FH, which becomes an attachment to the lease. Documentation will be included in the resident file to support proper notice.

Households that include a live-in attendant are required to execute a lease addendum authorizing the arrangement and describing the status of the attendant. [24 CFR 966.4(a)(1)(v)].

### **8.3 MODIFICATIONS TO THE LEASE [24 CFR 966.4(A)(3)]**

FH may modify its form of lease from time to time, giving residents 30 days for an opportunity to comment on proposed changes and an additional 30-day notice of the implementation of any changes.

Schedules of special charges and rules and regulations are subject to modification or revision. Residents will be provided at least thirty days' written notice of the reason(s) for any proposed modifications or revisions, and will be given an opportunity to present written comments. Comments will be taken into consideration before any proposed modifications or revisions become effective [24 CFR 966.3].

A copy of such notice shall be posted in the central office, and at site leasing offices [24 CFR 966.5].

Any modifications of the lease must be accomplished by a written addendum to the lease and signed by both parties.

A resident's refusal to execute FH approved lease modifications, or those modifications required by HUD, is a material breach of the Lease Agreement and grounds for termination of tenancy [24 CFR 966.4(l)(2)(iii)(E)].

### **8.4 ADDITIONS TO THE LEASE**

Requests for the addition of a new member to the household must first be approved by FH, prior to the actual move-in of the proposed new member, in accordance to Chapter 9, Part III, Section 9.24.

Following receipt of a family's request to add a new member, FH will conduct a pre-admission suitability review for those proposed household members over the age of 18. Only those members approved by FH will be added to the lease. Furthermore, FH will consider whether the resident's request to add a member(s) will exceed the occupancy limit for the unit as a factor determining whether to approve the request.

Factors which may determine a pre-admissions suitability review include, but are not limited to:

In cases where the resident plans to marry and add his or her spouse to the lease;

In cases where the resident desires to add a new family member to the lease, and/or employ a live-in aide.

Children born to a family member are not subject to screening for purposes of determining household additions.

Residents who fail to notify FH of additions to the household, or who permit persons to join the household (includes permitting non-residents to utilize a resident's address), without undergoing screening are considered to have unauthorized occupants by FH, and are in violation of the lease and subject to termination of tenancy [24 CFR 966.4(f)(3)].

## **8.5 LEASING UNITS WITH ACCESSIBLE OR ADAPTABLE FEATURES [24 CFR 8.27(a)(1)(2) and (b)]**

Before offering a vacant accessible unit to a non-disabled applicant, FH shall offer such units:

- First, to a current occupant of another unit in the same development, or other public housing developments, who has a disability that requires the special features of the vacant unit.
- Second, to an eligible qualified applicant on the waiting list having a disability that requires the special features of the vacant unit.
- Third, to an eligible qualified applicant on the waiting list who does not require the special features of the vacant unit.

FH will require such applicant to agree to move to an available non-accessible unit within 30 days when either a current resident and/or applicant needs the features of the unit or there is another unit available for the applicant. The applicant will be required to sign the "Occupancy Waiver" at the time of move in.

## **8.6 UTILITY SERVICES**

Residents are responsible for direct payment of utilities. Residents must abide by any and all regulations of the specific utility company, including regulations pertaining to advance payments of deposits. Since FH has a no seal contract with the Utility Company, the resident is required to provide documentation that service has been transferred from FH name and under the resident's responsibility as required by FH; otherwise, the resident will be charged for the usage billed. Failure to maintain utility services during tenancy is

a lease violation and grounds for termination of tenancy.

If there is a utility reimbursement payment, FH will pay the utility reimbursement payment directly to the resident.

## **8.7 SECURITY DEPOSITS [24 CFR 966.4(B)(5)]**

New residents must pay a security deposit to FH at the time of admission.

The Security Deposit is the greater of the applicant's TTP or \$150.00 minimum.

FH will hold the security deposit for the period the resident occupies the unit.

FH will refund the resident the amount of the security deposit, less any amount needed to pay the cost of:

- Unpaid Rent;
- Damages listed on the Move-Out Inspection Report that exceed normal wear and tear;
- Other charges under the Lease.

FH will refund the Security Deposit, less any amounts owed, as required by California State Law, within 21 days, following the end of the 30 day-notice of intent to vacate, once the resident has turned in keys, or once the unit is found vacant whichever comes first.

Per California Department of Consumer Affairs - Under California law, 21 calendar days or less after a resident moves out, the landlord must either:

- Send the resident a full refund of the security deposit, or
- Mail or personally deliver to the resident an itemized statement that lists the amounts of any deductions from the security deposit and the reasons for the deductions, together with a refund of any amounts not deducted.

FH will provide the resident or appropriate designee ~~identified above~~ with a written list and copies of receipts of any charges against the security deposit. If the resident disagrees with the amount charged to the security deposit, FH will provide a meeting to discuss the charges.

The resident must leave the dwelling unit in a clean and undamaged (beyond normal wear and tear) condition and must furnish a forwarding address to FH. All keys to the unit must be returned to Management upon vacating the unit.

FH will not use the security deposit for payment of rent or other charges while the resident is living in the unit.

If the resident transfers to another unit, FH will transfer their security deposit to the new unit. The resident will be billed for any maintenance or other charges due for the "old" unit.

## **8.8 RENT PAYMENTS [24 CFR 966.4(B)(1)]**

The resident's rent is due and payable in advance to Fresno Housing (FH) and mailed to FH's banking institution of choice, on or before the first day of every month. If the first day falls on a weekend or holiday, the rent is due and payable on the first business day thereafter.

- If the bank does not receive a payment by the fifth calendar day of the month via the lockbox process, a notice to pay rent or quit will be served to the resident.
- Residents shall make all payments by check or money order or cashier's check payable to Fresno Housing, or via online resident portal.
- FH shall collect a fee in the amount charged to FH by the bank anytime a check is not honored for payment.
- Residents who submit more than two (2) checks that are not honored for payment will be required to make rent payments by money order or cashier's check only.

## **8.9 FEES AND LOCKBOX SYSTEM**

The following is the LOCKBOX procedure for paying rent:

- Rent payments mailed to FH banking institution of choice designated Post Office Box ;
- The bank will scan the front of the money order/check, envelope and statement;
- All scanned documents and payment information is inputted and batched by the bank;
- The bank uploads all payment information to a secure web site;
- FH accesses the secure bank web site and imports the rent payment data file into the FH's database.
- Rent payments received via online banking will be directly deposited to FH banking institution of choice.

## **8.10 LATE FEES AND INSUFFICIENT FUND**

If the family fails to pay their rent by the fifth day of the month through the bank's lockbox center and FH has not agreed to accept payment at a later date, a 14-day Notice to Pay or Quit will be issued to the resident for failure to pay rent, demanding payment in full or the surrender of the premises.

In addition, if the resident fails to make payment by the end of office hours on the fifth day of the month, a late fee of \$20.00 will be charged. Notices of late fees will be in accordance with requirements regarding notices of adverse action. Charges are due and

payable 30 calendar days after billing. If the family requests a grievance hearing within the required timeframe, FH may not take action for nonpayment of the fee until the conclusion of the grievance process. If the resident can document financial hardship, the late fee may be waived on a case-by-case basis.

When a check is returned for insufficient funds or is written on a closed account, the rent will be considered unpaid and a returned check fee of \$25.00 will be charged for the first returned check and up to \$35.00 for any subsequent returned check. The fee will be due and payable 30 days after billing in addition to the late fee if applicable

## **8.11 SCHEDULES OF MAINTENANCE CHARGES**

A schedule of charges for maintenance services and repairs which is incorporated into the lease by reference shall be publicly posted in a conspicuous manner in the management office.

## **PART II: INSPECTIONS**

HUD rules require FH to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, FH may require additional inspections, in accordance with FH Policy. This part contains the FH's policies governing inspections, notification of unit entry, and inspection results.

## **8.12 INSPECTIONS OF PUBLIC HOUSING UNITS [24 CFR 966.4(I)]**

### **Move-In Inspections**

FH and the family will inspect the premises prior to occupancy of the unit in order to determine the condition of the unit and equipment in the unit. The initial inspection, signed by FH and the resident, will be kept in the resident file and a copy will be provided to the resident.

### **Annual Inspections [24 CFR 5.705]**

FH will inspect all units annually using HUD's Uniform Physical Condition Standards (UPCS) as a guideline.

Residents who "fail" the inspection due to housekeeping or resident-caused damages will be given 10 business days to correct noted items. FH will schedule a follow-up inspection to verify that the resident corrected the deficiencies.

Residents will be issued a copy of the inspection report with required corrections.

All inspections will include a check of all smoke alarms and carbon monoxide detectors to ensure proper working order.

Inspection report will indicate whether required corrections are to be charged to the resident or covered by FH.

Damages beyond "normal wear and tear" will be billed to the resident.

### **Quality Control Inspections**

FH will conduct periodic quality control inspections based on random sampling to determine the condition of the unit and to identify problems or issues in which FH can be of service to the family and to assure that repairs were completed at an acceptable level of craftsmanship and within an acceptable time frame.

FH will conduct quality control inspections on 10% of all units.

### **Special Inspections**

FH may conduct a special inspection for housekeeping, unit condition, suspected lease violation every 15 days until violation is cured or if there is a reasonable cause to believe an emergency exists.

HUD representatives or local government officials may review FH operations periodically and as a part of their monitoring may inspect a sampling of the FH inventory.

### **Move-Out Inspections [24 CFR 966.4(i)]**

The purpose of these inspections is to determine necessary repairs and whether there are damages that exceed normal wear and tear. FH will determine if there are resident caused damages to the unit. Resident caused damages may affect part or all of the family's security deposit.

In accordance with Section 1950.5(f) of the California Civil Code, FH will abide by the following Move-Out Inspection procedures when the resident submits a 30-day Notice of Intent to Vacate or the FH issues a 30-day Notice to Terminate Tenancy to the resident.

These procedures do not apply to residents who receive a Three-Day Notice to Quit due to a lack of time to provide a Pre- Move-Out inspection.

- FH shall notify the resident in writing of their mandatory initial Move-Out inspection and their right to be present for the inspection, at the time the resident submits a 30-Day Notice of Intent to Vacate .
- At the time the resident submits a 30-Day Notice of Intent to Vacate or FH issues a 30-Day Notice to Terminate Tenancy, the residents will be informed that the Pre- Move-Out inspection will be conducted no later than 48 hours prior to vacating the apartment. Should the resident decline an initial inspection, FH will be discharged of its duty.
- FH and the resident will schedule said inspection at a mutually agreed upon date and time. The Pre-Move-Out inspection should be scheduled no earlier than two weeks before the termination of the Resident Lease Agreement.
- FH will give the resident 24-hour prior written notice of the mutually agreed upon date and time. However, FH and the resident may forego the 24-hour written notice by executing a written waiver. FH will then proceed with the inspection whether the resident is present or not in the unit.
- Upon the completion of the inspection, FH will give the resident an estimate specifying the items that are in need of repair and/or cleaning which will be the

basis for deductions from the security deposit. This itemized statement will be provided to the resident within 24 hours of the inspection

- The resident will have the opportunity during the period from the completion of the initial inspection until termination of the Lease Agreement to remedy the deficiencies.

Following the final inspection, FH may deduct from the security deposit items not cured, items which occurred after the initial inspection, or items not identified during the initial inspection due to the presence of the resident's possessions.

#### **Emergency Inspections [24 CFR 966.4(i)(2)]**

FH may initiate an emergency inspection report to generate a work order if they believe that an emergency exists in the unit. In addition, FH may conduct an emergency inspection without a work order and generate a work order after the inspection has been conducted (see Entry of Premises Notice in this chapter.) Repairs are to be completed within 24 hours from the time the work order is issued. For emergency inspections or repairs, no advance notice is required for FH to enter the unit.

#### **Entry of Premises Notices**

FH will give 24-hour advance written notice prior to entering the unit for non-emergency inspections or repairs. Non-emergency entries to the unit will be made during reasonable hours of the day. For emergency inspections or repairs, no advance notice is required for FH to enter the unit.

An adult family member must be present in the unit during the inspection or repair if there are children present in the unit.

If no person is at home, FH will enter the unit and conduct the inspection or repairs.

If no one is in the unit, FH will leave a written notice to the resident explaining the reason the unit was entered and the date and time.

FH reserves the right to enter a unit, subject to the applicable notice, under the following conditions:

- Inspections and maintenance
- To make improvements and repairs
- Preventative Maintenance
- Routine Maintenance

#### **Non-Inspection Emergency Entry [24 CFR 966.4 (j)(1)]**

FH staff will allow access to the unit to proper authorities when issues of health or safety of the resident are concerned.

#### **Family Responsibility to Allow Inspection**

It is a violation of the Resident Lease Agreement for the resident to refuse to allow entry

to the unit for the reasons set forth in this ACOP and may be grounds for termination of the Resident Lease Agreement.

**Housekeeping Citations** Residents who “fail” an inspection due to housekeeping will be issued a ~~Housekeeping Citation~~notice, and a re-inspection will be conducted within ten (10) business days by FH staff. Should the resident “fail” the re-inspection, FH will conduct a unit inspection every 15 days ~~(not to exceed 2 inspections)~~ until violation is cured.

Should the family fail to comply with the re-inspection, it can be a material breach of the lease and grounds for termination of tenancy. Health & Safety issues will result in termination procedures according to Chapter 13, Section 13.6.

More than one citation issued to a family who has purposely and for convenience disengaged, the unit’s smoke detector and/or carbon monoxide detector will be considered a violation of the lease and may be grounds for termination.

### **Resident Damages**

Repeated failed inspections or damages to the unit beyond normal wear and tear may constitute serious or repeated lease violations. Repeated shall mean after three (3) violations.

“Beyond normal wear and tear” is defined as items that could be charged against the resident’s security deposit under state law.

## **8.13 GUEST POLICY**

The occupancy provisions of the Resident Lease Agreement allows for accommodation of Resident’s guest, for a consecutive period not to exceed one (1) week each year without prior approval of management. Guests may be permitted in a Dwelling Unit as long as they have no previous history of behavior that would be a lease violation. FH has discretionary authority to approve the occupation of a unit beyond 7 days.

Absence of evidence of any other address will be considered verification that the visitor is an unauthorized household member.

FH will consider:

- Statements from FH staff
- Vehicle license plate verification
- Post Office records
- Driver’s license verification
- Law enforcement reports
- Credit reports

Use of the unit address as the visitor’s current residence for any purpose that is not explicitly temporary shall be construed as permanent residence.

The burden of proof that the individual is a guest rests on the family. In the absence of such proof, the individual will be considered an unauthorized member of the family and FH may terminate the family's lease since prior approval was not requested for the addition.

In a joint custody arrangement, if the minor is in the household less than 90 days per year, the minor will be considered to be an eligible guest and not a family member. If both parents reside in Public Housing, only one parent shall be able to claim the child for deductions and for determination for the occupancy standards.

#### **8.14 HOME OCCUPATIONS**

FH in its sole discretion, may authorize a unit to be used as a place for conducting a home occupation; provided that the unit is used primarily as a place of residence and the following conditions are met to assure that the use of the unit is consistent with residential use and will not disturb the peaceful enjoyment of the premises by other residents.

##### Criteria for Home Occupations

- No construction, structural alteration or addition to the unit shall be permitted;
- Not more than one room in a unit shall be primarily used in connection with the home occupation;
- No special equipment or facilities other than furnishings, small tools, and hand-carried or light office machines shall be installed or utilized;
- No persons other than residents of FH shall work on the Premises in connection with the home occupation;
- There shall be no excessive vehicular traffic to or from the unit by customers, salesmen, repairmen, service vehicles, deliverymen, messengers or others beyond the amount of such traffic generally incidental to residential uses;
- There shall be no excessive foot traffic to or from the unit by customers, salesmen, repairmen, service vehicles, deliverymen, messengers or others beyond the amount of such traffic generally incidental to residential uses;
- No sound created by the operation of the home occupation shall raise the noise to a level which disturbs the neighbors or the housing complex;
- No hazardous or offensive materials shall be displayed, stored or utilized;
- No sign shall be displayed which in any way indicates the presence of a nonresidential activity;
- There shall be no evidence of nonresidential activity visible from any point beyond the immediate premises where the home occupation is located;
- Storage of goods and materials not associated with residential uses shall be limited

and shall not create a safety or health impact such as, but not limited to, fire safety or blockage of passage ways;

- Sale of firearms shall be prohibited.
- Must obtain any applicable local permits/approvals from agencies governing home occupations.

The FH designated staff shall have final approval of all Home Occupation activities.

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## CHAPTER 9 – STANDARDS FOR CONTINUED OCCUPANCY & REEXAMINATIONS [24 CFR 960.257, 960.259, 966.4]

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### INTRODUCTION

This chapter discusses both annual and interim reexaminations.

FH is required to verify each family's income and composition annually in order to adjust the family's rent accordingly. FH has adopted policies in regards to conducting annual and interim reexaminations that are consistent with regulatory requirements, and must conduct reexaminations in accordance with such policies [24 CFR 960.257(c)].

The frequency in which FH will reexamine income for a family depends on whether the family pays income-based or flat rent. HUD requires FH to offer all families the choice of paying income-based rent or flat rent annually. Per PIH Notice 2016-05, Streamlining Rule, Mixed Families may not ~~chesechoose~~ flat rent when their TTP is greater than the applicable flat rent. FH policies for offering families a choice of rents ~~areis~~ located in (Chapter 6 Income and Rent Determination).

**Part I: Standards for Continued Occupancy.** This part lists the criteria a resident must meet to be eligible for continued occupancy.

#### **Part II: Annual Reexaminations for Families Paying Income Based Rents or Flat Rent.**

This part discusses the requirements for annual reexaminations of income and family composition. Full reexaminations are conducted once a year for families paying income-based rent. Full reexaminations are conducted once every 3 years for families paying Flat Rent. This part also contains FH policies for conducting annual updates of family composition for flat rent families. FH may perform reexaminations for households on fixed income, as defined by HUD on a triennial basis.

**Part III: Interim Reexaminations.** This part includes HUD requirements and FH policies related to when a family may and must report changes that occur between annual reexaminations.

**Part IV: Recalculating Resident Rent.** After gathering and verifying required information for an annual or interim reexamination, FH will recalculate the resident rent. 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.

Policies governing reasonable accommodation, family privacy, required family cooperation and program abuse, as described elsewhere in this ACOP, apply to annual and interim reexaminations.

### PART I: STANDARDS FOR CONTINUED OCCUPANCY

#### 9.0 ELIGIBILITY FOR CONTINUED OCCUPANCY

Residents who meet the following criteria will be eligible for continued occupancy:

- Qualify as a family as defined in this policy.
- Are in full compliance and able to abide with all the obligations and responsibilities described in the Resident Lease Agreement;
- All family members are to have submitted their Social Security numbers (or have certifications on file that they do not have a Social Security number);
- For family members who have submitted required citizenship/eligible immigration status/non-contending documents.
- All household members age 18 and over will be required to execute a consent form and pass the criminal background check as part of the annual recertification process.
- Are not subject to sex offender lifetime registration under a State sex offender registration program. If FH discovers that a current public housing resident is subject to sex offender lifetime registration under a State sex offender registration program, FH will proceed with eviction of the resident. Families who fail to remove any household member(s), which includes minors 13 to 17 years of age, that are subject to a sex offender lifetime registration under a State sex offender registration program, will be evicted.

#### **Verification of Family Break-up**

If a family breaks up into two otherwise eligible families while living in public housing, only one of the new families will continue to be assisted

If a court determines the disposition of property between members of the resident family in a divorce or separation decree, FH will abide by the court's determination.

In the absence of a judicial decision or an agreement among the original family members, FH will determine which family will continue in occupancy taking into consideration the following factors:

- The interest of any minor children, including custody arrangements;
- The interest of any ill, elderly, or disabled family members;
- Any possible risks to family members as a result of domestic violence, dating violence, sexual assault, and stalking in accordance with VAWA Reauthorization Act of 2013 or criminal activity;
- The recommendations of social service professionals.

### **PART II: ANNUAL REEXAMINATIONS FOR FAMILIES PAYING INCOME BASED RENTS & FLAT RENTS [24 CFR 960.257 & 24 CFR 960.257(2)]**

#### **9.1 OVERVIEW**

This part contains FH policies for conducting annual reexaminations.

For those families who choose to pay income-based rent, FH will conduct a reexamination of income and family composition annually [24 CFR 960.257(a)(1)]. For families who choose to pay flat rents, FH must conduct a reexamination of family composition annually, and must conduct a reexamination of family income once every 3 years [24 CFR 960.257(a)(2)]. Policies related to the reexamination process for families paying flat rent are located in Section 9.28 of this chapter.

For all residents of public housing, whether those residents are paying income-based or flat rents, FH must conduct an annual review of community service requirement compliance. The resident will also sign the consent forms for criminal background checks.

FH is required to obtain information needed to conduct reexaminations. Families are required to provide current and accurate information on income, assets, allowances, deductions, family composition and community service compliance as part of the reexamination process [24 CFR 960.259].

FH may streamline the income determination process for family member with fixed sources of income. [Streamlined Annual Reexaminations [24 CFR Parts 5, 891, 960.257 and 982.516(b), Federal Register Vol. 82, No. 237, December 12, 2017], [PIH 2016-05 (HA)]

Fixed sources of income include:

- Social Security, Supplemental Security income (SSI) and Security Disability Insurance (SSDI)
- Pensions
- Insurance Policies
- Retirement Funds
- Annuities
- Disability or Death benefits

And other sources of income subject to a COLA or rate of interest.

The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

Third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years FH may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or rate of interest. FH may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family for a re-determination of rent, FH must perform third-party verification of all income sources.

## **9.2 SCHEDULING ANNUAL REEXAMINATIONS**

FH has established a policy to ensure that the annual reexamination for each family paying the income-based rent is completed within a 12-month period [24 CFR

960.257(a)(1)].

FH will schedule annual reexaminations to coincide with the family's anniversary date. FH will begin the annual reexamination process approximately 120 days in advance of the scheduled effective 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).

When families move to another dwelling unit the anniversary date will not be changed, but under no circumstances shall the annual reexamination take place later than twelve months.

### 9.3 ANNUAL REEXAMINATIONS

In order to be recertified, families are required to provide current and accurate information on income, assets, allowance deductions, and family composition. Families are required to report and certify this information by completing a Questionnaire with the FH. Additionally, families must complete Form HUD-92006 at this time [Notice PIH 2009-36].

FH is required to conduct income recertifications every year for families who pay income based rent and every 3 years for families who pay flat rent.

For families who move in after the 1<sup>st</sup> day of the month, the annual reexaminations will be completed no later than the first of the month in which the family moved in, the following year. (Example: If family moves in August 15, the effective date of the next annual recertification is August 1.)

For families who move in on the first of the month, the annual recertification will be completed within 12 months of the anniversary of the move-in date. (Example: If family moves in August 1, the annual recertification will be effective on August 1, the following year.)

### 9.4 RECERTIFICATION NOTICE TO THE FAMILY

All families will be notified of their obligation to recertify by first class mail. The notification shall be sent at least 120 days in advance of the anniversary date. FH will provide the notice in an accessible format if an accommodation is requested by a person with a disability, FH will also mail the notice to a third party, if requested as a reasonable accommodation for a person with disabilities. These accommodations will be granted upon verification that they meet the need presented by the disability.

During recertification, FH staff shall explain family choice of income-based or flat rent, with an estimate of what the income-based rent would be and a statement of what the flat rent is.

The family will indicate whether the family chooses income-based or flat rent by checking the appropriate box on the document, and signing the document. The document will be retained in the resident's file.

## 9.5 RECERTIFICATION NOTICE TIMELINE

First Reminder Notice A notice is mailed 120 days in advance of the recertification anniversary date. The resident is required to complete the Questionnaire packet regarding their family composition, community service requirement, and incomes of all household members. The family must present all required documents at the time of their scheduled appointment.

Second Reminder Notice If the resident fails to respond within 30 days of the First Reminder Notice, FH will provide a Second Reminder Notice approximately 90 days prior to the resident's recertification anniversary date informing the resident that his/her recertification information is due. The second notice contains the same information as the First Notice and a new appointment is scheduled for the resident's annual recertification.

Third Reminder Notice If the resident does not respond to the Second Reminder Notice before 60 days prior to the recertification anniversary date, FH will provide the resident a Third Reminder Notice no later than 60 days prior to the anniversary date. **This notice serves will include as a 60-Day Notice to Terminate Tenancy.**

Fourth Reminder Notice / Notice of Intent to Terminate If the resident does not respond to the Third Reminder Notice before 30 days prior to the recertification anniversary date, FH will provide the resident a Fourth Reminder Notice no later than 30 days prior to the anniversary date. This notice serves as a 30-Day Notice to Terminate Tenancy.

## 9.6 METHODOLOGY

If the family chooses income-based rent, or if the family has paid the flat rent for three (3) years, FH will schedule the specific date and time of appointments in the written notification to the family.

## 9.7 PERSONS WITH DISABILITIES

Persons with disabilities, who are unable to come to FH office will be granted a reasonable accommodation of conducting the interview at the person's home/by mail/hospital, upon verification that the accommodation requested meets the need presented by the disability.

## 9.8 COLLECTION OF INFORMATION

The family is required to complete ~~the a~~ Questionnaire packet, including the following HUD forms;

- a-HUD-92006 form.

- HUD-Form 9886,
- Debts Owed HUD Form-52675,
- RHIP

~~and~~In addition all adult members of the household will be required to ~~execute~~sign a Criminal Background Consent Form and provide necessary documentation needed to determine eligibility.

## 9.9 REQUIREMENTS TO ATTEND

All adult family members will be required to attend ~~the annual~~ recertification interviews, ~~and sign the Personal Declaration~~complete a new questionnaire, and complete all required forms, listed above, for continued occupancy no less than 60 days before the effective date; ~~the FH General Release of Information-Criminal Background Consent form and HUD-form 9886.~~

If the head of household or any adult member of the household is unable to attend the interview the appointment will be rescheduled as outlined in *Recertification Notice Timeline* of this Chapter, but in all cases must occur no less than 30 days before the effective date. Failure to comply with the recertification requirement will be material breach of the lease and may result in termination of tenancy.

## 9.10 CRIMINAL BACKGROUND CHECK

Information obtained through the criminal background checks will be used for lease enforcement and may lead to eviction [24 CFR 5.903(e)]. Criminal background checks of residents will be conducted in accordance with the policy in Chapter 3 Eligibility and Suitability for Admission to Public Housing.

FH will request a criminal background check of all adult members of the household as part of the eligibility process for continued occupancy on an annual basis. A criminal check will be requested up to 120 days prior to the resident's annual certification date.

FH will conduct criminal background checks using but not limited to FBI finger printing, DOJ Lifetime Sex Offender, and County and Statewide Criminal searches. A family may be denied assistance if the results show s evidence which would prohibit admission to public housing.

## 9.11 FAILURE TO RESPOND TO NOTIFICATION TO RECERTIFY

The written notification will explain which family members are required to attend the recertification interview. The family may call to request another appointment date up to five business days prior to the interview.

If the family does not appear for the recertification interview, and has not rescheduled or

made prior arrangements with FH will reschedule a second appointment.

Failure to recertify by the timeframe in this Policy under Section 9.5 will result in termination of tenancy. Exceptions to these policies may be made by the Property Manager if the family is able to document an emergency situation that prevented them from canceling or attending the appointment.

## **9.12 DOCUMENTS REQUIRED FROM THE FAMILY**

In the appointment letter to the family, the FH will request the following documentation to be brought by the family:

Documentation of income for all family members

Documentation of liquid and non-liquid assets

Documentation to substantiate any deductions or allowances

Personal Declaration Form completed and signed by all adult family members

Sign the Criminal Background Consent form, the HUD-9886 Consent form, Debts Owed HUD-52675 and HUD-92006.

## **9.13 VERIFICATION OF INFORMATION**

All information which affects the family's continued eligibility for the program, will be verified in accordance with the verification procedures and guidelines described in this Policy. Verifications used for recertification must be less than 120 days old. All verifications will be placed in the file, which has been established for the family.

When the information has been verified, it will be analyzed to determine:

- The continued eligibility of the resident as a *family* or as the *remaining members* of a family;
- The unit size required by the family;
- The amount of rent the family should pay.
- Documentation of financial aid

## **9.14 CHANGES IN THE RESIDENT RENT**

When a reexamination is completed, FH will, if necessary, execute a new lease or mail a written "Notice of Review Determination" (LHA Form No.19) to the resident showing the change in the amount of anticipated family income and the change in monthly rent including the amount of retroactive rent (determined in accordance with Chapter 15) due, if any, resulting from such reexamination or redetermination. The resident agrees to accept such "Notice of Review Determination" as an amendment to the lease. [24 CFR 966.4(c)]

## **9.15 RESIDENT RENT INCREASES**

If the resident's rent increases, a thirty-day notice will be mailed to the family prior to the anniversary date.

If less than thirty days are remaining before the anniversary date, the resident rent increase will be effective on the first of the second month following the thirty-day notice.

If there has been a misrepresentation or a material omission by the family, or if the family causes a delay in the recertification process, there will be a retroactive increase in rent to the anniversary date.

## **9.16 RESIDENT RENT DECREASES**

If the resident's rent decreases, it will be effective on the anniversary date.

If the family causes a delay so that the processing of the recertification is not complete by the anniversary date, rent change will be effective on the first day of the month following completion of the recertification processing by the FH.

### **PART III: INTERIM REEXAMINATIONS POLICY [24 CFR 960.257; 24 CFR 966.4]**

## **9.17 REPORTING INTERIM CHANGES**

Families must report any changes in household composition or income to FH between annual recertifications, within thirty calendar days of the change. This includes additions due to birth, adoption and court-awarded custody. The family must obtain FH approval prior to all other additions to the household.

The U.S. citizenship/eligible immigrant status of additional family members must be declared and verified prior to the approval by FH of the family member being added to the lease.

Families that elect to pay flat rent are not required to report increases in income or assets.

## **9.18 PROCESSING INTERIM REEXAMINATION**

FH will conduct an interim reexamination based on the reported changes for all decreases, which would result in a reduction of the family's total tenant payment (TTP).

FH will not conduct an interim reexamination for increases in the family income, unless

- the family requests FH to do so, or
- there is also a change in the family composition.

**Note:** Increase in family income as a result of the following will be processed in accordance with the applicable Section in this policy.

- Families that claim zero income, refer to Section 9.20 of this policy.

- Family member(s) who qualify for Earned Income Disallowance (EID), FH will conduct an interim reexamination in accordance with Section 6.5 of this policy.

## 9. 19 INCOME CHANGES RESULTING FROM WELFARE PROGRAM REQUIREMENTS

FH will not reduce the public housing rent for families whose welfare assistance is reduced due to a “specified welfare benefit reduction,” ~~which is a reduction in welfare benefits,~~ defined below as “Imputed Welfare Income.” [24 CFR §5.615 (c)(5)].

The table below breaks down the possible reasons welfare benefit may be reduced or terminated and whether imputed welfare assistance needs to be included in the annual income. ~~due to:~~

<u>Reasons for welfare benefits reduction or termination.</u>	<u>Is imputed welfare income included as annual income?</u>
<u>Due to limit of how long benefits may be received (expiration of lifetime benefits)</u>	<u>No, imputed welfare income is not included.</u>
<u>The family was not able to obtain required employment, however the family complied with the program economic self-sufficiency requirements.</u>	<u>No, imputed welfare income is not included.</u>
<u>The family has not complied with other welfare agency requirements, i.e. the family did not attend their welfare recertification appointment.</u>	<u>No, imputed welfare income is not included.</u>
<u>Fraud by a family member in connection with the welfare program.</u>	<u>Yes, imputed welfare income must be included in income.</u>
<u>Noncompliance with the welfare agency requirements to participate in an economic self-sufficiency program, i.e. Welfare to Work (WTW).</u>	<u>Yes, imputed welfare income must be included in income.</u>

- ~~Fraud by a family member in connection with the welfare program; or~~
- ~~Noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.~~

~~A “specified welfare benefit reduction” does not include a reduction of welfare benefits due to:~~

- ~~The expiration of a lifetime time limit on receiving benefits; or~~
- ~~A situation where the family has complied with welfare program requirements but cannot or has not obtained employment, such as: The family has complied with welfare program requirements, but the durational time limit, such as a cap on the length of time a family can receive benefits, causes the family to lose their welfare benefits.~~
- ~~Noncompliance with other welfare agency requirements.~~

- **Definition of “Covered Family”**

A household that receives benefits for welfare or public assistance from a State or public agency program which requires, as a condition of eligibility to receive assistance, the participation of a family member in an economic self-sufficiency program.

- **Definition of “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 included in the family’s income for purposes of determining rent.

The amount of imputed welfare income is determined by FH, based on written information supplied to FH by the welfare agency, including:

The amount of the benefit reduction

The term of the benefit reduction

The reason for the reduction

Subsequent changes in the term or amount of benefit reduction

Imputed welfare income will be included at annual and interim recertifications during the term of reduction of welfare benefits.

The amount of imputed welfare income will be offset by the amount of additional income a family receives that begins after the sanction was imposed. When additional income is at least equal to the imputed welfare income, the imputed income will be reduced to zero.

If the family was not an assisted resident of public housing when the welfare sanction began, imputed welfare income will not be included in annual income.

- **Verification Before Denying a Request to Reduce Rent**

FH will obtain written verification from the welfare agency stating that the family’s benefits have been reduced for fraud or noncompliance before denying the family’s request for rent reduction.

FH will rely on the welfare agency’s written notice to FH regarding welfare sanctions.

- **Cooperation Agreements**

FH has a written cooperation agreement in place with the local welfare agency which assists FH in obtaining the necessary information regarding welfare sanctions.

FH has taken a proactive approach to culminating an effective working relationship between FH and the local welfare agency for the purpose of targeting economic self-sufficiency programs throughout the community that are available to public housing residents.

FH and the local welfare agency have mutually agreed to notify each other of any economic self-sufficiency and/or other appropriate programs or services that would benefit public housing residents.

- **Family Dispute of Amount of Imputed Welfare Income**

If the family disputes the amount of imputed income and FH denies the family's request to modify the amount, FH will provide the resident with a notice of denial, which will include:

- An explanation for FH determination of the amount of imputed welfare income
- A statement that the resident may request a grievance hearing

If the resident requests a grievance hearing, the resident is not required to pay an escrow deposit pursuant to Section 966.55(e) for the portion of resident rent attributable to the imputed welfare income.

## **9.20 OTHER INTERIM REPORTING ISSUES**

An interim recertification will be scheduled for families with zero income every 90 days.

Any changes reported by residents other than those listed in this section will not be processed between regularly scheduled annual recertifications.

## **9.21 FH ERRORS**

If FH makes a calculation error at admission to the program or at an annual recertification, an interim recertification will be conducted to correct the error. If the family had been undercharged as a result of the calculation error, the family will not be charged retroactively. If the family had been overcharged as a result of the calculation error, the family will receive a rent credit retroactively.

## **9.22 TIMELY REPORTING CHANGES IN INCOME AND ASSETS**

- **Standard for Timely Reporting of Changes for Reexaminations and Interims**

FH requires that families report income, assets and family changes, to FH within thirty-(30) calendar days of the date the change occurred. Any information, document or

signature needed from the family to verify the change must be provided at the time of the reported change.

If the change is not reported within the required time period, or if the family fails to provide signatures, certifications or documentation, (in the time period requested by FH), it will be considered untimely reporting.

FH staff will initiate an appointment with the family no later than five (5) working days after the family reports the change to FH. Interim changes are to be completed within fifteen (15) working days after the family reports the change to FH.

- **Procedures When the Change Is Reported in a Timely Manner**

FH will notify the family of any changes in Resident Rent to be effective according to the following guidelines:

**Increases in the Resident Rent** are effective on the first of the month following at least thirty days' notice. It is FH policy to not process interim increases in Resident Rent between regular annual recertifications except for those identified in Section 9.18 of this policy. However, the family must still report changes to family composition or income to management within thirty days of their occurrence.

**Decreases in the Resident Rent** are effective the first of the month following the month in which the change is reported.

- **Procedures When the Change Is Not Reported by the Resident in a Timely Manner**

If the family does not report the change as described under Timely Reporting, the family will have caused an unreasonable delay in the interim or annual recertification processing and the following guidelines will apply:

**Increase in Resident Rent** will be effective retroactive to the date the increase in income became effective. The family will be liable for any underpaid rent, and may be required to sign a Repayment Agreement. The Repayment Agreement will require that the family pay 25% of the retroactive amount due and the remaining balance to be paid in equal payments over a period of time not to exceed 12 months for amounts under \$2400 or 24 months for any amount in excess of \$2400. (Refer to Chapter 16 for further guidance).

**Decrease in Resident Rent** will be effective on the first of the month following completion of processing by FH and not retroactively.

- **Procedures When the Change Is Not Processed by FH in a Timely Manner**

"Processed in a timely manner" means that the change goes into effect on the date it should when the family reports the change and provides all information, documents and signatures in a timely manner. If the change cannot be made effective on that date, the change is not processed by FH in a timely manner as stated below:

FH staff will initiate an appointment with the family no later than five (5) working days after the family reports the change to FH. Interim changes are to be completed within fifteen (15) working days after the family reports the change to FH.

Therefore, an increase will be effective after the required thirty days' notice prior to the first of the month after completion of processing by FH.

If the change resulted in a decrease, the overpayment by the family will be calculated retroactively to the date it should have been effective, and the family will be credited for the amount.

## **9.23 REPORTING OF CHANGES IN FAMILY COMPOSITION**

The members of the family residing in the unit must be approved by FH. The family must inform FH and request approval of additional family members other than additions due to birth, adoption, and court-awarded custody before the new member occupies the unit.

All changes in family composition must be reported within thirty (30) calendar days of the occurrence in writing.

If an adult family member is declared permanently absent by the head of household, the notice must contain a certification by the head of household [or spouse] that the member (who may be the head of household) removed is permanently absent.

### **1. Increase in Family Size**

FH will consider a unit transfer (if needed under the Occupancy Guidelines) for additions to the family in the following cases:

1. Addition by marriage/or marital-type relationship
2. Addition of a minor who is a member of the nuclear family who had been living elsewhere
3. Addition of a FH-approved live-in attendant
4. Addition of any relation of the Head or Spouse
5. Addition due to birth, adoption or court-awarded custody

If a change due to birth, adoption, court-awarded custody, or need for a live-in attendant requires a larger size unit due to overcrowding, the change in unit size shall be made effective upon availability of an appropriately sized unit. [See Chapter 7 for verification requirements.](#)

### **2. Definition of Temporarily/Permanently Absent**

FH must compute all applicable income of every family member who is on the lease, including those who are temporarily absent.

Income of persons permanently absent will not be counted. If the spouse is temporarily absent and, in the military, all military pay and allowances (except hazardous duty pay when exposed to hostile fire and any other exceptions to military pay HUD may define) is counted as income.

It is the responsibility of the head of household to report changes in family composition. FH will evaluate absences from the unit in accordance with this policy.

### **3. Absence of Entire Family**

These policy guidelines address situations when the family is absent from the unit, but has not moved out of the unit. In cases where the family has moved out of the unit, FH will terminate tenancy in accordance with the appropriate lease termination procedures contained in this Policy.

Families are required to notify FH before they move out of a unit in accordance with the lease and to give FH information about any family absence from the unit.

“Absence” means that no family member is residing in the unit. In order to determine if the family is absent from the unit, FH may:

- Conduct a home visit
- Write letters to the family at the unit
- Post letters on exterior door
- Telephone the family at the unit
- Interview neighbors
- Verify if utilities are in service
- Check with Post Office for forwarding address
- Contact emergency contact

If the entire family is absent from the unit for more than 14 consecutive days, whether or not rent has been paid, the unit will be considered to be abandoned and FH will terminate tenancy in accordance with Chapter 8 of this policy and the Resident Lease Agreement.

As a reasonable accommodation for a person with a disability, FH may approve an extension. (See Absence Due to Medical Reasons for other reasons to approve an extension.) During the period of absence, the rent and other charges must remain current.

### **4. Absence of Any Member**

Any member of the household will be considered permanently absent and removed from the lease if s/he is away from the unit for 60 days in a 12-month period except as

otherwise provided in this chapter.

#### **5. Absence Due to Medical Reasons**

If any family member leaves the household to enter a facility such as hospital, nursing home, or rehabilitation center, FH will seek advice from a reliable qualified source as to the likelihood and timing of their return. If the verification indicates that the family member will be permanently confined to a nursing home, the family member will be considered permanently absent. If the verification indicates that the family member will return in less than 120 consecutive days, the family member will not be considered permanently absent, as long as rent and other charges remain current. A resident may request in writing to have a longer absence approved. FH has full discretion of ~~approval, and~~ approval and will make determinations on a ~~case-by-case~~ case-by-case basis.

If the person who is determined to be permanently absent is the sole member of the household, assistance will be terminated in accordance with FH "Absence of Entire Family" policy.

#### **6. Absence Due to Incarceration**

If the sole member is incarcerated for more than 60 consecutive days, s/he will be considered permanently absent. Any member of the household, other than the sole member, will be considered permanently absent if s/he is incarcerated for 60 consecutive days. The rent and other charges must remain current during this period.

#### **7. Foster Care and Absences of Children**

If the family includes a child or children temporarily absent from the home due to placement in foster care, FH will determine from the appropriate agency when the child/children will be returned to the home.

If the time period is to be greater than 18 months from the date of removal of the child(ren), the family will be required to move to a smaller size unit. If all children are removed from the home permanently, the unit size will be reduced in accordance with the FH occupancy guidelines.

#### **8. Absence of Adult**

If neither parent remains in the household nor the appropriate agency has determined that another adult is to be brought into the assisted unit to care for the children for an indefinite period, FH will treat that adult as a visitor for the first 30 calendar days. This will be noted as an exception to the FH Policy.

If by the end of that period, court-awarded custody or legal guardianship has been awarded to the caretaker, and the caretaker qualifies under Resident Suitability criteria, the lease will be transferred to the caretaker.

If the court has not awarded custody or legal guardianship, but the action is in process, FH will secure verification from social services staff or the attorney as to the status.

FH will transfer the lease to the caretaker, in the absence of a court order, if the caretaker qualifies under the Resident Suitability criteria and has been in the unit for more than 30 days and it is reasonable to expect that custody will be granted.

When FH approves a person to reside in the unit as caretaker for the child(ren), the income of the caretaker should be counted pending a final disposition. FH will work with the appropriate service agencies to provide a smooth transition in these cases.

If a member of the household is subject to a court order that restricts him/her from the home for more than 30 days, the person will be considered permanently absent.

If an adult child goes into the military and leaves the household, they will be considered permanently absent.

Full time students who attend school away from the home and live with the family during school recess will be considered temporarily absent from the household.

#### **9.24 REMAINING MEMBER OF RESIDENT FAMILY—RETENTION OF UNIT**

To be considered the remaining member of the resident family, the person must have been previously approved by FH to be living in the unit and must have signed the lease.

A minor who is a remaining family member will be authorized to remain in the unit by establishing emancipation or by adding another adult, who has been determined eligible and suitable by FH, to the Lease. When such situations arise, FH will work with the minor's advocate, which may be another adult relative or caseworker, to determine the appropriate course of action and time necessary for the minor to meet one of the two criteria to remain in the unit.

A live-in attendant, by definition, is not a member of the family and will not be considered a remaining member of the Family.

A reduction in family size may require a transfer to an appropriate unit size per the FH Occupancy Standards.

#### **9.25 CHANGES IN UNIT SIZE**

FH shall grant exceptions from the occupancy standards if the family requests and the FH determine the exceptions are justified according to this policy.

FH will consider the size of the family, as well as the number of bedrooms, when an exception is requested in accordance with Chapter 5, Occupancy Standards & Unit Offers.

#### **9.26 CONTINUANCE OF ASSISTANCE FOR "MIXED" FAMILIES**

Under the Non-Citizens Rule, "mixed" families are families that include at least one citizen or eligible immigrant and any number of ineligible members.

"Mixed" families who were participants on June 19, 1995, shall continue receiving full assistance if they meet the following criteria:

1. The head of household, co-head or spouse is a U.S. citizen or has eligible immigrant

status; AND

2. The family does not include any ineligible immigrants other than the head, spouse, parents or children of the head, co-head or spouse.

Mixed families who qualify for continued assistance after 11/29/96 may receive prorated assistance only.

1. If the mixed families do not qualify for continued assistance, the member(s) that cause the family to be ineligible for continued assistance may move, or the family may choose prorated assistance. FH may no longer offer temporary deferral of termination (see Chapter 13, Lease Terminations).

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## CHAPTER 10 – PETS [24 CFR 5, SUBPART C; 24 CFR 960, SUBPART G]

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### INTRODUCTION

The purpose of this policy is to establish FH policy and procedures for ownership of common household pets in general occupancy developments and to ensure that no applicant or resident is discriminated against regarding admission or continued occupancy because of ownership of pets. It also establishes reasonable rules governing the keeping of common household pets.

Nothing in this policy or the dwelling lease limits or impairs the right of persons with disabilities to own animals that are used to assist them.

**Part I: Service Animals and Assistance Animals.** This part explains the difference between services animals, assistance animals and pets and contains policies related to the designation of a service animal or assistance animal as well as their care and handling.

**Part II: Pet policies for all developments.** This part includes pet policies that are common to both elderly/disabled developments and general occupancy developments.

**Part III: Pet deposits and fees for elderly/disabled developments.** This part contains policies for pet deposits and fees that are applicable to both elderly/disabled developments and general occupancy developments.

### **PART I: SERVICES ANIMALS AND ASSISTANCE ANIMALS** **[Section 504; Fair Housing Act (42 U.S.C.); 24 CFR 5.303; 24 CFR 960.705;** **Notice FHEO 2013-01]**

#### 10.0 OVERVIEW

This part discusses situations under which permission for a service animal or assistance animal may be denied and establishes standards for the care of service and assistance animals.

Notice FHEO 2013-01 was published April 25, 2013. The notice explains the difference between service animals and assistance animals. While the ADA applies to the premises of public housing agencies and to “public accommodations” such as stores and movie theatres, it does not apply to private-market rental housing. Therefore, in public housing, FH must evaluate a request for a service animal under both the ADA and the Fair Housing Act.

A service animal is any dog animal that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

Assistance animals are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or are animals that provide emotional support that

alleviates one or more identified symptoms ~~for~~ effects of a person's disability.

Assistance animals perform many disability-related functions, including but not limited to, the following:

Guiding blind or low vision individuals

Alerting ~~deaf~~ or hearing impaired individuals

Providing minimal protection or rescue assistance

Pulling a wheelchair

Fetching items, -such as medicine or a phone

Alerting persons to impending seizures

Providing emotional support to persons with disabilities who have a disability-related needed for such support.

Neither service animals nor assistance animals are pets, and thus, are not subject to the FH's pet policies described in Parts II through III of this chapter [24 CFR 5.303; 960.705: Notice FHEO 2013-01].

## 10.1 APPROVAL OF SERVICE ANIMALS AND ASSISTANCE ANIMALS

Notice FHEO 2013-01 states that the FH should first evaluate the request as a service animal under the ADA. The FH may only ask whether the dog is a service animal required due to a disability, and what tasks the animal has been trained to perform.

The FH cannot require proof of training or certification for a service animal, even if the disability and/or tasks performed are not readily apparent. If the disability and/or tasks performed are not readily apparent, no further inquiries may be made.

FH may only deny a request for a service animal in limited circumstances:

- The animal is out of control and the handler does not take effective action to control it.
- The animal is not housebroken, or
- The animal poses a direct threat to health or safety that cannot be eliminated or reduced by a reasonable modification of other policies

If the animal meets the test for "service animal," the animal must be permitted to accompany the individual with a disability to all areas of the facility where persons are normally allowed to go, ~~unless (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.~~

~~A service animal must be permitted in all areas of the facility where members of the public are allowed.~~

If the animal does not qualify as a service animal under the ADA, the FH must next determine whether the animal would qualify as an assistance animal under the reasonable accommodation provisions of the Fair Housing Act. Such assistance animals may include animals other than dogs.

A person with a disability is not automatically entitled to have an assistance animal. Reasonable accommodation requires that there is a relationship between the person's disability and his or her need for the animal [PH Occ GB, p. 179].

FH may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed by the person with the disability [PH Occ GB, p. 178].

FH's refusal to permit persons with a disability to use and live with an assistance animal that is needed to assist them, would violate Section 504 of the Rehabilitation Act and the Fair Housing Act unless [PH Occ GB, p. 179]:

- There is reliable objective evidence that the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation, or
- There is reliable objective evidence that the animal would cause substantial physical damage to the property of others

FH has the authority to regulate service animals and assistance animals under applicable federal, state, and local law [24 CFR 5.303(b)(3); 960.705(b)(3)].

- For an animal to be excluded from the pet policy and be considered a service animal, it must be a trained ~~dog~~animal, and there must be a person with disabilities in the household who requires the ~~dog's~~animal's service.

## **10.2. CARE AND HANDLING**

HUD regulations do not affect any authority FH may have to regulate service animals and assistance animals under federal, state, and local law [24 CFR 5.303; 24 CFR 960.705].

- Residents must care for service animals and assistance animals in a manner that complies with state and local laws, including anti-cruelty laws.
- Residents must ensure that service animals and assistance animals do not pose a direct threat to the health or safety of others, or cause substantial physical damage to the development, dwelling unit, or property of other residents.
- When a resident's care or handling of an service animal or assistance animal violates these policies, the FH will consider whether the violation could be reduced or eliminated by a reasonable accommodation. If the FH determines that no such accommodation can be made, the FH may withdraw the approval of a

particular service or assistance animal.

## **PART II: PET POLICIES FOR ALL DEVELOPMENTS** **[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]**

### **10.3. OVERVIEW**

This part contains pet policies that apply to all developments. The purpose of a pet policy is to establish clear guidelines for ownership of pets and to ensure that no applicant or resident is discriminated against regarding admission or continued occupancy because of ownership of pets. It also establishes reasonable rules governing the keeping of common household pets.

### **10.4 DEFINITION OF “COMMON HOUSEHOLD PET”**

*Common household pet* means a domesticated animal, such as a dog, cat, bird, or fish that is traditionally ~~recognized as a companion animal and is~~ kept in the home for pleasure rather than commercial purposes.

### **10.5 STANDARDS FOR PETS [24 CFR 5.318; 960.707(B)]**

#### **Types of Pets Allowed**

~~No types of pets other than the~~Only the following types of pets may be kept by a resident.

Residents are not permitted to have more than one two (2) common household pets per household, including small caged animals, i.e., birds.

#### **1. Dogs**

Maximum adult weight: 25 pounds

Must be housebroken

Must be spayed or neutered before six (6) months of age

Must have all required inoculations

Must be licensed as specified now or in the future by State law and local ordinance

Any litter resulting from the pet must be removed from the unit as soon as the puppies are weaned or are eight weeks of age.

#### **2. Cats**

Must be a household cat

Must be spayed or neutered before six (6) months of age

Must have all required inoculations

Must be trained to use a litter box or other waste receptacle

Must be licensed as specified now or in the future by State law or local ordinance

Any litter resulting from the pet must be removed from the unit as soon as the kittens are weaned or are eight weeks of age.

3. Birds

Must be enclosed in a cage at all times

4. Fish

Maximum aquarium size: 10 gallons

Must be maintained on an approved stand.

## 10.6 PET RESTRICTIONS

The following are not considered “common household pets”:

- Domesticated dogs that exceed Twenty-five pounds. (Animals certified to assist the disabled are exempt from the weight limitation.
- Vicious ~~or intimidating dogs.~~ Under California law (Food and Agriculture Code Sec. 31603), a “vicious” dog is defined as, but not limited to:
  - (a) Any dog seized under Section 599aa of the California Penal Code and upon the sustaining of a conviction of the owner or keeper under subdivision (a) of Section 597.5 of the Penal Code.
  - (b) Any dog which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being.
  - (c) Any dog previously determined to be and currently listed as a potentially dangerous dog which, after its owner or keeper has been notified of this determination, continues the behavior described in Section 31602 or is maintained in violation of Section 31641, 34642, or 31643.
  - (d) Any dog breeds that have been determined to be “potentially dangerous” or “vicious” under California law or local animal control municipal code.~~ordinance.~~
- Wild, feral, or any other animals that are not amenable to routine human handling
- Any poisonous animals of any kind
- Fish in aquariums exceeding ten gallons in capacity
- Non-human primates

- Animals whose climatological needs cannot be met in the unaltered environment of the individual dwelling unit
- Pot-bellied pigs
- Ferrets or other animals whose natural protective mechanisms pose a risk of serious bites and/or lacerations ~~to small children~~
- Hedgehogs or other animals whose protective instincts and natural body armor produce a risk of serious puncture injuries ~~to children~~
- Chicks, turtles, or other animals that pose a significant risk of salmonella infection to those who handle them
- Pigeons, doves, mynahs, ~~psittacosis, parrots~~ and birds of other species that are hosts to the organisms that cause psittacosis in humans
- Snakes or other kinds of reptiles
- Rodents (rabbit, guinea pig, or hamster)
- Animals used for commercial breeding
- Any other animal that, due to its size, nature, or disposition, presents a risk to public health or safety or cannot be properly cared for due to its physical needs.

#### 10.7. MANAGEMENT APPROVAL OF PETS [24 CFR 960.707(B)(5)]

Pets will not be allowed until Management approval has been obtained in writing. Approval for the keeping of a pet shall not be extended pending the completion of these requirements.

- **Registration:** include certificate signed by a licensed veterinarian or State/local authority that the pet has received all inoculations required by State or local law, and that the pet has no communicable disease(s) and is pest-free.
- **Annual Renewal Registration:** must be renewed and will be coordinated with the annual recertification date and proof of current license and inoculation must be provided at each annual recertification.
- **Posting:** Each pet owner must provide two color photographs of their pet(s) each year and display a "Pet Here" sticker, provided by FH, which will be displayed on the front door of the unit at all times.

#### 10.8. REFUSAL TO REGISTER PETS

If FH ~~refuses-denies the request~~ to register a pet, a written notification will be sent to the pet owner stating the reason for denial and shall be served in accordance with HUD Notice requirements. FH will refuse to register a pet if:

- The pet is not a “common household pet” as defined in this policy;
- Keeping the pet would violate any House Rules;
- The pet owner fails to provide complete pet registration information, or fails to update the registration annually;
- FH reasonably determines that the pet owner is unable to keep the pet in compliance with the pet rules and other lease obligations. The pet’s temperament and behavior may be considered as a factor in determining the pet owner’s ability to comply with provisions of the lease.

The notice of refusal may be combined with a notice of a pet violation.

## **10.9 PET AGREEMENT**

Residents who have been approved to have a pet must enter into a pet agreement with FH, or the approval of the pet will be withdrawn.

The pet agreement is the resident’s certification that he or she has received a copy of FH pet policy and applicable house rules, that he or she has read the policies and/or rules, understands them, and agrees to comply with them.

The resident further certifies by signing the pet agreement that he or she understands that noncompliance with FH pet policy and applicable house rules may result in the withdrawal of FH approval of the pet or termination of tenancy.

## **10.10 PET RULES**

Pet owners must maintain pets responsibly, in accordance with the FH policies, and in compliance with applicable state and local public health, animal control, and animal cruelty laws and regulations [24 CFR 5.315; 24 CFR 960.707(a)].

Residents who have been approved to have a pet must adhere to the following rules:

1. Agree that the resident is responsible and liable for all damages caused by their pet(s).
2. No animals may be tethered or chained inside the dwelling unit.
3. When outside the dwelling unit, all pets must be on a leash or in an animal transport enclosure and under the control of a responsible individual. Pets must not be chained and left unattended outside.
4. All fecal matter deposited by the pet(s) must be promptly and completely removed

from any common area. Failure to do so will result in a Pet Waste Removal charge in accordance with Schedule of Maintenance Charges for labor. All animal waste or the litter from litter boxes shall be picked up immediately by the pet owner, disposed of in sealed plastic trash bags, and placed in a trash bin. Litter shall not be disposed of by being flushed through a toilet.

5. Litter boxes shall be stored inside the resident's dwelling unit or in animal enclosures maintained within dwelling units AND must be removed and/or replaced regularly. Failure to do so will result in a Pet Waste Removal charge.
6. Mandatory implementation of effective flea control by measures that produce no toxic hazard to children who may come into contact with treated animals.
7. All complaints of cruelty and all mammalian bites will be referred to animal control of applicable policy agency for investigation and enforcement.
8. Deceased pets shall be properly disposed by Fresno County Animal Control Services where applicable and shall not be disposed on Housing Authority property.
9. The right of management to enter dwelling unit upon receipt of notice from FH.
10. The right of management to enter dwelling unit when there is evidence that an animal left alone is in danger or distress, or is creating a nuisance.
11. The right of management to seek impoundment and sheltering of any animal found to be maintained in violation of housing rules, pending resolution of any dispute regarding such violation, at owner's expense. The resident shall be responsible for any impoundment fees, and the FH accepts no responsibility for pets so removed.
12. That failure to abide by any animal-related requirement or restriction constitutes a violation of the "Resident Obligations" in the resident's Lease Agreement.
13. Visiting animals are not allowed at any time.

#### **10.11 PET CARE**

No pet (excluding fish) shall be left unattended in any apartment for a period in excess of 24 hours.

All residents/pet owners shall be responsible for adequate care, nutrition, exercise and medical attention for his/her pet at all times.

In the event the resident relocates to non-FH owned property (such as privately-owned apartment complex or hotel) at the request of FH to complete emergency repairs to the resident's unit and/or to complete modernization and/or rehabilitation activities, the resident shall have the responsibility for the board and care of their pet during the duration of the resident's relocation to non-FH owned property.

#### **10.12\_ DESIGNATED PET/NO-PET AREAS [24 CFR 5.318(G), PH OCC GB, P. 182]**

The following areas are designated no-pet areas:

- FH playgrounds, management offices, community centers, and recreation center areas.

### **10.13 \_ ALTERATIONS TO UNIT**

Residents/pet owners shall not alter their unit, patio, premises or common areas to create an enclosure for any animal. Installation of pet doors is prohibited.

### **10.14 \_ ADDITIONAL REQUIREMENTS**

Pet owners must take precautions to eliminate pet odors.

Residents will prevent disturbances by their pets that interfere with the quiet enjoyment of the premises of other residents in their units or in common areas. This includes, but is not limited to loud or continuous barking, howling, whining, biting, scratching, chirping, or other such activities.

Residents shall not feed stray animals; doing so, or keeping stray or unregistered animals will be considered having a pet without permission.

### **10.15 \_ RESPONSIBLE PARTIES**

The resident will provide the following information when registering their pet: Name, address and telephone number of the veterinarian who will be providing regular care for the pet; name of the adult household member who will be primarily responsible for animal care; name and contact information for a household member who will return home in the event an animal experiences distress or causes a disturbance when left alone; contact information for a non-household member who will respond to emergency situations regarding the pet in question.

### **10.16 \_ PET RULE VIOLATION NOTICE**

If a determination is made on objective facts supported by written statements that a resident/pet owner has violated the Pet Rule Policy, FH will serve a 3-Day Notice to Perform Covenant.

### **10.17 \_ NOTICE FOR PET REMOVAL**

If the resident/pet owner and FH are unable to resolve the violation at the meeting or the pet owner fails to correct the violation in the time period allotted by FH, FH may serve notice to remove the pet. The Notice shall contain:

- A brief statement of the factual basis for FH determination of the Pet Rule that has been violated; and
- A statement that failure to remove the pet may result in the initiation of termination of tenancy procedures.

### **10.18 \_ TERMINATION OF TENANCY**

FH may initiate procedure for termination of tenancy based on a pet rule violation if, the pet owner has failed to remove the pet or correct a pet rule violation within the time period specified; and the pet rule violation is sufficient to begin procedures to terminate tenancy under terms of the lease.

#### **10.19 PET REMOVAL**

If the death or incapacity of the pet owner threatens the health or safety of the pet, or other factors occur that render the owner unable to care for the pet, the situation will be reported to the Responsible Party designated by the resident/pet owner. Includes pets who are poorly cared for or have been left unattended for over 24 hours.

If the responsible party is unwilling or unable to care for the pet, or if the FH after reasonable efforts cannot contact the responsible party, FH may contact the appropriate State or local agency and request the removal of the pet.

#### **10.20 EMERGENCIES**

FH will take all necessary steps to insure that pets, which become vicious, display symptoms of severe illness, or demonstrate behavior that constitutes an immediate threat to the health or safety of others, are referred to the appropriate State or local entity authorized to remove such animals.

**IF IT IS NECESSARY FOR FH TO PLACE THE PET IN A SHELTER FACILITY, THE COST WILL BE THE RESPONSIBILITY OF THE RESIDENT/PET OWNER.**

### **PART III: PET DEPOSITS AND FEES FOR ALL DEVELOPMENTS**

#### **10.21 PET DEPOSITS**

FH requires residents who own or keep pets in their units to pay a refundable pet deposit. This deposit is in addition to any other financial obligation generally imposed on residents of the development [24 CFR 5.318(d)(1)].

FH may permit gradual accumulation of the pet deposit by the pet owner [24 CFR 5.318(d)(3)].

The pet deposit is not part of the rent payable by the resident [24 CFR 5.318(d)(5)].

**The resident/pet owner shall be required to pay a refundable deposit of \$200.00 per pet for the purpose of defraying all reasonable costs directly attributable to the presence of a pet. The deposit fee shall not apply to birds and fish.**

FH will refund the Pet Deposit to the resident, less any damage caused by the pet to the dwelling unit, upon removal of the pet or the owner from the unit. [24 CFR 5.318(d)(1)]

FH will provide the resident or designee identified above with a written list of any charges against the pet deposit. If the resident disagrees with the amount charged to the pet deposit, FH will provide a meeting to discuss the charges.

All reasonable expenses incurred by FH as a result of damages directly attributable to the

presence of the pet in the dwelling unit will be the responsibility of the resident, including:

- The cost of repairs and replacements to the resident's dwelling unit;
- Fumigation and cleaning of the dwelling unit;
- Common areas of the development if applicable.

## 10.22 OTHER CHARGES

### **Pet Waste Removal Charge**

A separate pet waste removal charge in accordance with Schedule of Maintenance Charges for labor per occurrence will be assessed against the resident for violations of the pet policy.

Pet deposit and pet waste removal charges are not part of rent payable by the resident.

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## CHAPTER 11- COMMUNITY SERVICES

[24 CFR Part Subpart F, 960.300 through 960.609 and 24 CFR 903.7(l)]

### INTRODUCTION

This chapter explains HUD regulations requiring FH to implement a community service program for all non-exempt adults living in public housing.

HUD regulations pertaining to the community service requirement are contained in 24 CFR 960 Subpart F (960.600 through 960.609). FH and residents must comply with the community service requirement, effective with FH fiscal years that commenced on or after October 1, 2000. Per 903.7(l)(1)(iii), FH Plan contains a statement of how FH will comply with the community service requirement, including any cooperative agreement that FH has entered into or plans to enter into.

Community service is the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities [24 CFR 960.601(b)].

In administering community service requirements, FH must comply with all nondiscrimination and equal opportunity requirements [24 CFR 960.605(c)(5)].

### 11.0 REQUIREMENTS

Except for any adult resident who is an exempt individual, each adult resident of public housing shall:

- Contribute eight (8) hours per month of community service (not including Political activities); or
- Participate in an economic self-sufficiency program (as defined in the regulations) for eight (8) hours per month; or
- Perform eight (8) hours per month of combined activities- (Community service and economic self-sufficiency programs).
- The required community service or self-sufficiency activity may be completed 8 hours each month or may be aggregated across a year. Any blocking of hours is acceptable as long as 96 hours is completed by each annual certification of compliance [Notice PIH 2015-12].

### 11.1 DEFINITIONS

#### **Exempt Individual [24 CFR 960.601(b), Notice PIH 2009-48]**

FH shall provide an exemption from the community service requirement for any adult resident who meets the following HUD exemption criteria:

- Is 62 years of age or older;

- Is a blind or disabled individual, as defined under section 216(l)(1) of 1614 of the Social Security Act (42 U.S.C. 416 (i) (1); 1382c), and who certifies that because of this disability she or he is unable to comply with the service provisions of this subpart, or:
- Is a primary caretaker of such individual;
- Is engaged in a work activity as defined in PIH Notice 2003-17 and section 407(d) of the Social Security Act (42 USC Section (d)); FH will consider 30 hours per week as the minimum number of hours needed to qualify for a work activity exemption.
- Is able to meet the requirements under a state program funded under part A of Title IV of the Social Security Act, or under any other welfare program of the State in which the public housing authority is located, including a State-administered welfare-to-work program, and has not been found by the State or other administering entity to be in noncompliance with such program.
- Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the FH is located, including a state-administered welfare-to-work program, and the supplemental nutrition assistance program (SNAP) and has not been found by the state or other administering entity to be in noncompliance with such program.
- Is a part-time student enrolled in at least six (6) credits and is working part-time at least 15 hours a week.

#### **Community Service [24 CFR 960.601(b), Notice PIH 2009-48]**

*Community service* is the performance of voluntary work or duties that are a public benefit and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities.

Eligible community service activities include, but are not limited to, work at:

- Local public or nonprofit institution such as: school, head start programs, before or after school programs, child care center, hospital, clinics, hospice, nursing homes recreation center, senior center, adult day care programs, homeless shelter, feeding program, food banks, distributing either donated or commodity foods or clothes closets, distributing donated clothing.
- Nonprofit organizations serving FH residents or their children such as: Boy or Girl Scouts, Boys and Girls Club, 4-H club, Police Activities League (PAL) organized children's recreation, mentoring or education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs.
- Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, and Meals on Wheels.
- Public or nonprofit organizations dedicated to seniors, youth, children, residents,

citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts

- FH housing to improve grounds or provide gardens (so long as such work does not alter the FH's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board
- Caring for the children of other residents so they may volunteer

NOTE: Community services at profit-motivated entities, volunteer work performed at homes or offices of general private citizens, political activity, and court-ordered or probation-based work will not be considered eligible community service activities.

#### **Economic Self-Sufficiency Program [24 CFR 5.603(b), Notice PIH 2009-48]**

For purposes of satisfying the community service requirement, an *economic self-sufficiency program* is defined by HUD as: any program designed to encourage, assist, train, or facilitate economic independence of assisted families or to provide work for such families.

These economic self-sufficiency programs include: job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management skills training, apprenticeship, or any other program necessary to ready a participant for employment.

In addition to the activities listed above, the FH authorizes the following economic self-sufficiency activities:

- Participation in FH Family Self Sufficiency Program.
- Other activities which further the goals of economic self-sufficiency as approved on an individual basis by FH.

#### **Work Activities [42 U.S.C. 607(d)], PIH Notice 2003-17**

As it relates to an exemption from the community service requirement, *work activities* means:

- Unsubsidized employment
- Subsidized private sector employment
- Subsidized public sector employment
- Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available
- On-the-job training
- Job search and job readiness assistance
- Community service programs
- Vocational educational training (not to exceed 12 months with respect to any

individual)

- Job skills training directly related to employment
- Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency
- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate

#### **Notification Requirements [24 CFR 960.605(c)(2)]**

FH will provide the family with a copy of the Community Service Policy found in Exhibit 11-1 (located at the end of this ACOP under “Exhibits”), at lease-up, lease renewal, when a family member is determined to be subject to the community service requirement during the lease term, and at any time upon the family’s request.

On an annual basis, at the time of lease renewal, FH will notify the family in writing of the family members who are subject to the community service requirement and the family members who are exempt. If the family includes nonexempt individuals the notice will include a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which they may record the activities they perform and the number of hours contributed. The form will also have a place for a signature by an appropriate official, who will certify to the activities and hours completed.

### **11.2 DETERMINATION OF EXEMPTION STATUS AND COMPLIANCE [24 CFR 960.605(C)(3)]**

FH must review and verify family compliance with community service requirements annually at least thirty (30) days before the end of the twelve-month lease term. The policy for documentation and verification of compliance with community service requirements may be found in Section 11.3 Documentation and Verification.

Where the lease term does not coincide with the effective date of the annual reexamination, FH will change the effective date of the annual reexamination to coincide with the lease term. In making this change, FH will ensure that the annual reexamination is conducted within 12 months of the last annual reexamination.

#### **Annual Determination**

##### ***Determination of Exemption Status***

FH will re-verify exemption status at the annual recertification, except for individuals who are exempt because they are 62 years of age and older, verification of exemption status will be done only at the initial examination.

##### ***Determination of Compliance***

For each adult resident subject to the community service requirement, the FH shall, 30 days before the expiration of the Lease Agreement [24 CFR 960.605(c)(3)], review and determine compliance with the community service requirement.

Such determinations shall be made in accordance with the principles of due process and

on a non-discriminatory basis.

Adult residents will not be permitted to self-certify their compliance with the community service requirement.

Approximately 60 days prior to the end of the lease term, FH will provide written notice requiring the family to submit documentation that all subject family members have complied with the service requirement. The family will have 10 business days to submit FH required documentation form(s).

If the family fails to submit the required documentation within the required timeframe, or FH approved extension, the subject family members will be considered noncompliant with community service requirements, and notices of noncompliance will be issued pursuant to the policies in Section 11.4, Noncompliance

### ***Change in Status***

#### **Exempt to Nonexempt Status**

If an exempt individual becomes nonexempt during the twelve-month lease term, it is the Family's responsibility to report this change to the FH within 10 business days.

Within 10 business days of a family reporting such a change, or the FH determining such a change is necessary, the FH will provide written notice of the effective date of the requirement and a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which the family member may record the activities performed and number of hours contributed.

The effective date of the community service requirement will be the first of the month following 30-day notice.

#### ***Determination of Initial Compliance***

When an adult family member becomes subject to community service, he or she must perform 8 hours of community service for the months he or she is subject to the requirement before the end of the lease term (anniversary date).

Example 1: Alberto Jones turns 18 on 5/10/15 and is not exempt from the community service requirement. His community service requirement begins on 6/1/15, and his initial compliance is reviewed before the end of the lease term (anniversary date), which is 11/30/15.

- Alberto must perform 6 months of community service in his initial compliance period, before the end of the lease term (anniversary date).

Example 2: Lisa Dewhurst leaves her job on 9/20/14 and is not exempt from the community service requirement. Her community service requirement begins on 10/1/14, and her initial compliance is reviewed before the end of the lease term (anniversary date), which is 6/30/15.

- Ms. Dewhurst must perform 9 months of community service in her initial compliance period, before the end of the lease term (anniversary date).

### **11.3 DOCUMENTATION AND VERIFICATION [24 CFR 960.605(C)(4)] .960.607.NOTICE PIH 2017-12**

FH must retain reasonable documentation of community service requirement performance or exemption in participant files.

#### **Documentation and Verification of Exemption Status**

All family members who claim they are exempt from the community service requirement will be required to sign the community service exemption certification form found in Exhibit 11-3. The FH will provide a completed copy to the family and will keep a copy in the resident file.

FH will verify that an individual is exempt from the community service requirement by following the verification hierarchy and documentation requirements in Chapter 7.

FH makes the final determination whether or not to grant an exemption from the community service requirement. If a resident does not agree with FH determination, s/he can dispute the decision through FH grievance procedures (see Chapter 14).

#### **Documentation and Verification of Compliance**

At each regularly scheduled reexamination, each nonexempt family member presents a signed standardized certification form developed by FH of community service and self-sufficiency activities performed over the last 12 months [Notice PIH 2009-48].

If qualifying community service activities are administered by an organization other than FH, a family member who is required to fulfill a community service requirement must provide certification to FH, signed by the organization, that the family member has performed the qualifying activities [24 CFR 960.607].

If anyone in the family is subject to the community service requirement, FH will provide the family with community service documentation forms at admission, at lease renewal, when a family member becomes subject to the community service requirement during the lease term, or upon request by the family.

Each individual who is subject to the requirement will be required to record their community service or self-sufficiency activities and the number of hours contributed on the required form. The certification form will also include places for signatures and phone numbers of supervisors, instructors, and counselors certifying to the number of hours contributed.

Families will be required to submit the documentation to FH, upon request by the FH.

If the FH has reasonable cause to believe that the certification provided by the family is false or fraudulent, the FH has the right to require third-party verification.

### **11.4 NONCOMPLIANCE**

#### **NONCOMPLIANT RESIDENTS**

The lease specifies that it is renewed automatically for all purposes, unless the family fails to comply with the community service requirement. Violation of the community service requirement is grounds for nonrenewal of the lease at the end of the twelve-month lease term, but not for termination of tenancy during the course of the twelve month lease term [24 CFR 960.603(b)].

FH may not evict a family due to CSSR noncompliance. However, if FH finds a resident is noncompliant with CSSR, the FH may provide written notification to the resident of the noncompliance which must include

- A brief description of the finding of non-compliance with CSSR
- A statement that the FH will not renew the lease at the end of the current 12-month lease term unless the resident enters into a written work-out agreement with the FH or the family provides written assurance that is satisfactory to the FH explaining that the resident or other noncompliant resident no longer resides in the unit. Such written work-out agreement must include the means through which noncompliant family member will comply with the CSSR requirement.

***Notice of Initial Noncompliance [24 CFR 960.607(b)]***

The notice must also state that the resident may request a grievance hearing on the FH determination, in accordance with the FH's grievance procedures, and that the resident may exercise any available judicial remedy to seek timely redress for the FH's nonrenewal of the lease because of the FH's determination.

**FH Policy**

The notice of noncompliance will be sent at least 45 days prior to the end of the lease term.

The family will have 10 business days from the date of the notice of noncompliance to enter into a written workout agreement to cure the noncompliance over the 12-month term of the new lease, provide documentation that the noncompliant resident no longer resides in the unit, or to request a grievance hearing.

If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has actually vacated the unit before the FH will agree to continued occupancy of the family. Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the family member that previously resided with them.

If the family does not request a grievance hearing, or does not take corrective action required by the notice of noncompliance within the required 10-business day timeframe, the FH will terminate tenancy.

**Continued Noncompliance and Enforcement Documentation [24 CFR 960.607 (b)]**

Should a family member refuse to sign a written work-out agreement, or fail to comply with the terms of the work-out agreement, FHs are required to initiate termination of tenancy proceedings at the end of the current 12-month lease (see 24 CFR 966.53 (c)) for failure to comply with lease requirements. When initiating termination of tenancy proceedings, the FH will provide the following procedural safeguards:

- (1) Adequate notice to the resident of the grounds for terminating the tenancy and for non-renewal of the lease;
- (2) Right of the resident to be represented by counsel;
- (3) Opportunity for the resident to refute the evidence presented by the FH, including the right to confront and cross-examine witnesses and present any affirmative legal or equitable defense which the resident may have; and.
- (4) A decision on the merits.

If FH determines that an adult resident subject to the community service requirement has not complied with the requirement, FH shall:

1. Notify the adult resident of such noncompliance;
2. Include in the notification that the determination of noncompliance is subject to the administrative grievance procedure under the FH's Grievance Procedures; and
3. Unless the resident enters into an agreement to comply with the community service requirement, the adult resident's Lease Agreement will not be renewed; and
4. FH may not renew or extend the resident's Lease Agreement upon expiration of the lease term and shall take such action as is necessary to terminate the tenancy of the household, unless FH enters into an agreement, before the expiration of the lease term, with the resident providing for the resident to cure any noncompliance with the community service requirement, by participating in an economic self-sufficiency program or contributing to community service as many additional hours as the resident needs to comply in the aggregate with such requirement over the 12-month term of the lease.

#### **11.5 INELIGIBILITY FOR OCCUPANCY FOR NONCOMPLIANCE**

FH shall not renew or extend any Lease Agreement, or provide any new Lease Agreement, for a dwelling unit for any household that includes an adult resident who was subject to the community service requirement and failed to comply with the requirement.

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## CHAPTER 12 – TRANSFER POLICY

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### INTRODUCTION

It is the policy of FH to permit a resident to transfer within or between housing developments under certain conditions (i.e., to be in closer proximity to work); when it is necessary to comply with occupancy standards; or when it will help accomplish the affirmative housing goals of FH.

FH will always consider transfer requests as a reasonable accommodation for a person with a disability.

Transfers will be made without regard to race, color, sex, religion, familial status, disability, national origin, marital status, actual or perceived sexual orientation, gender identity, ancestry, gender, or gender expression, in accordance with the Fair Housing Act, HUD's Equal Access Rule, or State and local anti-discrimination laws. Residents can be transferred to accommodate a disability<sup>i</sup>.

Residents will receive one unit offer for a transfer, whether for FH-initiated transfers or resident-initiated transfer requests approved by FH. Refusal of that offer without good cause will result in lease termination for mandatory transfers or the removal of the household from the transfer list for voluntary transfers.

The Agency designee shall retain discretionary authority to approve/disapprove all transfers.

This chapter describes HUD regulations and FH policies related to transfers in four parts:

**Part I: Emergency Transfers.** This part describes emergency transfers, emergency transfer procedures, and payment of transfer costs.

**Part II: FH Required Transfers.** This part describes types of transfers that may be required by FH, notice requirements, and payment of transfer costs.

**Part III: Transfers Requested by Residents.** This part describes types of transfers that may be requested by residents, eligibility requirements, security deposits, payment of transfer costs, and handling of transfer requests.

**Part IV: Transfer Processing.** This part describes creating a waiting list, prioritizing transfer requests, the unit offer policy, examples of good cause, deconcentration, transferring to another development and reexamination.

### PART I: EMERGENCY TRANSFERS

#### 12.0 OVERVIEW

HUD categorizes certain actions as emergency transfers [PH Occ GB, p. 147]. The emergency transfer differs from a typical transfer in that it requires immediate action by FH.

In the case of a genuine emergency, it may be unlikely that FH will have the time or resources to immediately transfer a resident. Due to the immediate need to vacate the unit, placing the resident on a transfer waiting list would not be appropriate. Under such

circumstances, if an appropriate unit is not immediately available, FH will find alternate accommodations for the resident until the emergency passes, or a permanent solution, i.e., return to the unit or transfer to another unit, is reached.

## **12.1 EMERGENCY TRANSFERS**

If the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants, FH will offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time [24 CFR 966.4(h)].

The VAWA 2013 final rule requires FH to adopt an emergency transfer plan for victims of domestic violence, dating violence, sexual assault, or stalking. Exhibit 16.3

The following are considered emergency circumstance warranting an immediate transfer of the resident or family:

Maintenance conditions in the resident's unit, building or at the site that pose an immediate, verifiable threat to the life, health or safety of the resident or family members that cannot be repaired or abated within 24 hours. Examples of such unit or building conditions would include:

- A gas leak;
- No heat in the building during the winter;
- No water; toxic contamination;
- Serious water leaks.
- Fire<sup>2</sup>
- A verified incident of domestic violence, dating violence, sexual assault, or stalking. For instances of domestic violence, dating violence, sexual assault, or stalking, the threat may be established through documentation outlined in section 16-22, or by any proof accepted by FH.

FH will immediately process requests for transfers due to domestic violence, dating violence, sexual assault, or stalking. FH will allow a resident to make an internal emergency transfer under VAWA when a safe unit is immediately available. If an internal transfer to a safe unit is not immediately available, FH will assist the resident in seeking an external emergency transfer either within or outside the housing program.

FH has adopted an emergency transfer plan, which is included as Exhibit 16-3 to this plan.

## **12.2 EMERGENCY TRANSFER PROCEDURES**

If the transfer is necessary because of maintenance conditions, and an appropriate unit is not immediately available, FH will provide temporary accommodations to the resident by arranging for temporary lodging at a hotel or similar location. If the conditions that required the transfer cannot be repaired, or the condition cannot be repaired in a reasonable amount of time, FH will transfer the resident to the first available and appropriate unit after the temporary relocation. Emergency transfers are mandatory for the resident.

## **PART II: FH REQUIRED TRANSFERS**

### **12.3 OVERVIEW**

FH may require that a resident transfer to another unit under certain circumstances. For example, FH may require a resident to transfer to make an accessible unit available to a disabled family. FH may also transfer a resident in order to maintain occupancy standards based on family composition. Finally, FH may transfer residents in order to demolish, dispose, revitalize or renovate the unit; including units converted through Rental Assistance Demonstration.

As authorized under the Rental Assistance Demonstration (RAD), Fresno Housing (FH) converted public housing units to Project Based Rental Assistance (PBRA), Project Based Voucher (PBV), or other affordable housing such as, Low Income Housing Tax Credit (LIHTC). RAD requires a Temporary Tenant Relocation plan which was prepared by FH in accordance with HUD issued RAD notices. The plan provides for families to be temporarily relocated during the rehabilitation to nearby temporary housing (at the cost of Fresno Housing) in order to limit inconvenience to the tenant. Families that are affected by the conversion will continue to be treated as public housing residents during temporary relocation and will be transferred to other available public housing units.

A transfer that is required by FH is an adverse action, and is subject to the notice requirements for adverse actions [24 CFR 966.4(e)(8)(i)].

### **12.4 TYPES OF FH REQUIRED TRANSFERS**

The types of transfers that may be required by FH, include, but are not limited to,

- Transfers to make an accessible unit available for a disabled family.
- Transfers to comply with occupancy standards.
- Transfers for demolition, disposition, revitalization, or rehabilitation.
- Emergency transfers as discussed in Part I of this chapter.
- Transfers required by FH that are mandatory for the resident.

- **Transfers to Make an Accessible Unit Available**

When a family is initially given an accessible unit, but does not require the accessible features, FH may require the family to agree to move to a non-accessible unit when it becomes available [24 CFR 8.27(b)].

When a non-accessible unit becomes available, FH will transfer a family living in an accessible unit that does not require the accessible features, to an available unit that is not accessible. FH may wait until a disabled resident requires the accessible unit before transferring the family that does not require the accessible features out of the accessible unit.

- **Occupancy Standards Transfers**

FH may require a resident to move when a reexamination indicates that there has

been a change in family composition, and the family is either overcrowded or over-housed according to FH policy [24 CFR 960.257(a)(4)]. On some occasions, FH may initially place a resident in an inappropriately sized unit at lease-up, where the family is over-housed, to prevent vacancies. The public housing lease will include the resident's agreement to transfer to an appropriately sized unit based on family composition [24 CFR 966.4(c)(3)].

FH will transfer a family when the family size has changed and the family is now too large (overcrowded) or too small (over-housed) for the unit occupied.

For purposes of the transfer policy, overcrowded and over-housed are defined as follows:

**Overcrowded:** the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides, according to the chart in Chapter 5.

**Over-housed:** the family no longer qualifies for the bedroom size in which they are living based on the FH's occupancy standards as described in Chapter 5.

FH may also transfer a family who was initially placed in a unit in which the family was over-housed to a unit of an appropriate size based on the FH's occupancy standards, when FH determines there is a need for the transfer.

FH may elect not to transfer an over-housed family in order to prevent vacancies.

A family that is required to move because of family size will be advised by FH that a transfer is necessary and that the family has been placed on the transfer list.

Families that request and are granted an exception to the occupancy standards (for either a larger or smaller size unit) in accordance with the policies in Chapter 5 will only be required to transfer if it is necessary to comply with the approved exception.

- **Demolition, Disposition, Revitalizations, or Rehabilitation Transfers**

These transfers permit FH to demolish, sell or do major capital or rehabilitation work at a building site [PH Occ GB, page 148].

FH will relocate a family when the unit or site in which the family lives is undergoing major rehabilitation that requires the unit to be vacant, or the unit is being disposed of or demolished. FH's relocation plan may or may not require transferring affected families to other available public housing units.

If the relocation plan calls for transferring public housing families to other public housing units, affected families will be placed on the transfer list.

In cases of revitalization or rehabilitation, the family may be offered a temporary relocation if allowed under Relocation Act provisions, and may be allowed to return to their unit, depending on contractual and legal obligations, once revitalization or rehabilitation is complete.

## **12.5 ADVERSE ACTION [24 CFR 966.4(E)(8)(I)]**

A FH required transfer is an adverse action. As an adverse action, the transfer is subject to the requirements regarding notices of adverse actions. If the family requests a grievance hearing within the required timeframe, FH may not take action on the transfer until the conclusion of the grievance process.

## **PART III: TRANSFERS REQUESTED BY RESIDENTS**

### **12.6 OVERVIEW**

HUD provides FH with discretion to consider transfer requests from residents. The only requests that FH is required to consider are requests for reasonable accommodation. All other transfer requests are at the discretion of FH. To avoid administrative costs and burdens, this policy limits the types of requests that will be considered by FH.

Some transfers that are requested by residents will be treated as higher priorities than others due to the more urgent need for the transfer.

### **12.7 TYPES OF RESIDENT REQUESTED TRANSFERS**

The types of requests for transfer that FH will consider are limited to requests for transfers:

- To alleviate a serious or life threatening medical condition.
- Transfers due to a threat of physical harm or criminal activity<sup>3</sup> including Emergency Transfers under VAWA.
- Reasonable accommodation.
- Transfers to a location closer to employment.

No other transfer requests will be considered by the FH.

FH will consider the following as high priority transfer requests:

- When a transfer is needed to alleviate verified medical problems of a serious or life-threatening nature
- When there has been a verified threat of physical harm or criminal activity. Such circumstances may, at FH's discretion, include an assessment by law enforcement indicating that a family member is the actual or potential victim of a criminal attack, retaliation for testimony, or a hate crime.
- When a family requests a transfer as a reasonable accommodation. Examples of a reasonable accommodation transfer include, but are not limited to, a transfer to a first floor unit for a person with mobility impairment, or a transfer to a unit with accessible features.

FH will consider the following as regular priority transfer requests:

- When a family requests a larger bedroom size unit even though the family does not meet the FH's definition of overcrowded, as long as the family meets the FH's occupancy standards for the requested size unit
- When the head of household or spouse is employed 25 miles or more from the public housing unit, has no reliable transportation and public transportation is not adequate

Resident requested transfers are considered optional.

## 12.8 ELIGIBILITY FOR TRANSFER

Transferring residents do not have to meet the admission eligibility requirements pertaining to income or preference. FH has established the following standards for considering a transfer request [PH Occ GB, p. 150].

Except where reasonable accommodation is being requested, FH will only consider transfer requests from residents that meet the following requirements:

- Have not engaged in criminal activity that threatens the health and safety of residents and staff.
- Owe no back rent or other charges, or have a pattern of late payments.
- Have no housekeeping lease violations or history of damaging property.
- Has resided in their unit for a minimum of 12 months before being eligible for a transfer to another housing development.
- The resident may not request more than one transfer every four years. (Exceptions to this standard will be made for medical or other emergency situations.)

A resident with housekeeping standards violations will not be transferred until the resident passes a follow-up housekeeping inspection.

Exceptions to the good record requirement may be made at the discretion of FH. Exceptions may also be made when FH determines that a transfer is necessary to protect the health or safety of a resident who is a victim of domestic violence, dating violence, sexual assault, or stalking and who provides documentation of abuse.

If a family requested to be placed on the waiting list for a unit size smaller than designated by the occupancy guidelines, the family will not be eligible to transfer to a larger size unit for a period of two years from the date of admission, unless they have a change in family size or composition, or it is needed as a reasonable accommodation.

## 12.9 HANDLING OF REQUESTS

Residents requesting a transfer to another unit or development will be required to submit a written request for transfer.

In case of a reasonable accommodation transfer, FH will encourage the resident to make the request in writing using a reasonable accommodation request form. However, FH will consider the transfer request any time the resident indicates that an accommodation is needed whether or not a formal written request is submitted.

FH will respond by approving the transfer and putting the family on the transfer list, by denying the transfer, or by requiring more information or documentation from the family, such as documentation of domestic violence, dating violence, sexual assault, or stalking in accordance with FH VAWA Policy, Exhibit 16.5 in this plan.

If the family does not meet the “good record” requirements under Section 7.9, the designated staff will address the problem and, until resolved, the request for transfer will be denied.

FH will respond within ten (10) business days of the submission of the family's request. If the FH denies the request for transfer, the family will be informed of its grievance rights.

## **PART IV: TRANSFER PROCESSING**

### **12.10 OVERVIEW**

Generally, transfers should be placed on a transfer list and handled in the appropriate order. The transfer process must be clearly auditable to ensure that residents do not experience disparate treatment.

### **12.11 TRANSFER LIST**

FH's Property Management Division (PMD) will maintain a transfer list to ensure that transfers are processed in the correct order and that procedures are uniform across all properties.

Emergency transfers will not automatically go on the transfer list. Instead emergency transfers will be handled immediately, on a case by case basis. If the emergency will not be finally resolved by a temporary accommodation, and the resident requires a permanent transfer, that transfer will be placed at the top of the transfer list.

Transfers will be processed in the following order:

1. Emergency transfers (hazardous maintenance conditions)
2. High-priority transfers (verified medical condition, threat of harm or criminal activity, and reasonable accommodation)
3. Transfers to make accessible units available
4. Demolition, renovation, etc.
5. Occupancy standards
6. Other FH-required transfers
7. Other resident-requested transfers

Within each category, transfers will be processed in order of the date a family was placed on the transfer list, starting with the earliest date.

With the approval of the Agency designee, FH may, on a case-by-case basis, transfer a family without regard to its placement on the transfer list in order to address the immediate need of a family in crisis.

Demolition and renovation transfers will gain the highest priority as necessary to allow FH to meet the demolition or renovation schedule.

### **12.12 TRANSFER OFFER POLICY**

- Residents will receive one offer of a transfer. A resident must accept or reject the unit offered within three business days of the date the offer is made.
- When the transfer is required by FH, refusal of that offer without good cause will result in lease termination.

- When the transfer has been requested by the resident, refusal of that offer without good cause will result in the removal of the household from the transfer list and the family must wait six months to reapply for another transfer.
- Residents requesting to transfer to another unit or development are required to submit a Resident Request to Transfer Form to the site management office. Within ten business days, the designated property staff will review the request and determine if the resident is in good standing with FH, has met the **12-month** residency requirement, and has not transferred from another site within the last four years.
- Upon determination by the designated property staff, that the resident has met the transfer eligibility criteria, the Resident Request to Transfer Form (RRTF) will be submitted to the designated staff.
- Should the request be approved, the RRTF will be forwarded to the designated staff to determine if a vacant unit, of the appropriate size, is available. Upon acceptance of the unit by the resident, the receiving development staff will facilitate the lease-in appointment. Should a unit not be available, FH will notify the resident that their name has been placed on the transfer list for the location and/or bedroom size desired. If the request is denied, the family will be sent a letter stating the reason for denial, and offering the family an opportunity for an informal hearing.
- Requests to transfer to another unit within the same development, generally for medical reasons or to accommodate a smaller/larger family composition, will be reviewed and approved by the designated management staff. In cases where the designated management staff denies the transfer request, the resident will be notified in writing of the decision and offered an opportunity for an informal hearing.
- New applicants shall have priority over transfers, except for Emergency and/or FH required transfers.

### **12.13 GOOD CAUSE FOR UNIT REFUSAL**

Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

Inaccessibility to source of employment, education, or job training, children's day care, or an educational program for children with disabilities, so that accepting the unit offer would require the adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities.

The family demonstrates to FH's satisfaction that accepting the offer will place a family member's life, health or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, or risk assessments related to witness protection from a law enforcement agency. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption.

A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member.

An elderly or disabled family makes the decision not to occupy or accept occupancy in designated housing; (24 CFR 945.303(d));

The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move. FH has the right to investigate and ask for documents regarding refusals.

FH will require documentation of good cause for unit refusals.

#### **12.14 SECURITY DEPOSITS**

When a family transfers from one unit to another, FH will transfer their security deposit to the new unit. The resident will be billed for any maintenance or others charges due for the "old" unit.

In the case of FH initiated transfers, the inability to pay the security deposit should not delay the transfer and will be handled on a case-by-case basis.

#### **12.15 COST OF TRANSFER**

Residents are responsible for all moving costs related to their transfer. FH will only incur the reasonable cost of transfers initiated by FH due to demolition, disposition, revitalization, rehabilitation, and/or a reasonable accommodation for a resident with a disability. Upon approval of the transfer, residents must complete their move within three business days.

The resident will be charged rent on both units until the keys from the old unit are turned in to FH.

#### **12.16 RECERTIFICATION**

The date of the annual recertification will not change upon the completion of the transfer.

#### **12.17 DECONCENTRATION**

If subject to deconcentration requirements, FH will consider its deconcentration goals when transfer units are offered. When feasible, families above the Established Income Range will be offered a unit in a development that is below the Established Income Range, and vice versa, to achieve FH's deconcentration goals. A deconcentration offer will be considered a "bonus" offer; that is, if a resident refuses a deconcentration offer, the resident will receive one additional transfer offer.

<sup>1</sup> 24 CFR 100.5

<sup>2</sup> If a unit becomes uninhabitable due to conditions caused by the resident, any member of the resident household, or the resident's guests, will be addressed through the lease violation process and the resident shall not have the rights set forth above, or if the cause for the conditions is determined after the transfer, the FH may still terminate tenancy.

<sup>3</sup> Such transfers may be initiated after the FH receives input from local law enforcement. In considering whether to initiate such transfers, the FH will take account the circumstances creating the risk of violence and make a determination in the best interest of the resident and the FH.

<sup>4</sup> Voluntary if the family is between the minimum and maximum occupancy standard but the family requests a transfer, e.g. to permit older children of opposite sexes to have separate bedrooms.

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## CHAPTER 13 – LEASE TERMINATIONS [24 CFR 966.4]

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### INTRODUCTION

FH may terminate tenancy for a family based on the resident's action(s) or failure to act in accordance with HUD regulations [24 CFR 966.4 (I)(2)], and the terms of the Resident Lease Agreement. This chapter describes FH's policies for notification of lease termination and provisions of the Resident Lease Agreement.

This chapter presents the policies that govern both the family's and FH's termination of the lease. It is presented in four parts:

**Part I: Termination by Resident.** This part discusses the family's voluntary termination of the lease and the requirements the FH places upon families who wish to terminate their lease.

**Part II: Termination by FH - Mandatory.** This part describes the policies that govern how, and under what circumstances, a mandatory lease termination by the FH occurs. This part also includes nonrenewal of the lease for noncompliance with community service requirements.

**Part III: Termination by FH – Other Authorized Reasons.** This part describes the FH's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes FHs to terminate. For some of these options HUD requires the FH to establish policies and lease provisions for termination, but termination is not mandatory. For other options the FH has full discretion whether to consider the options as just cause to terminate as long as the FH policies are reasonable, nondiscriminatory, and do not violate state or local landlord-resident law. This part also discusses the alternatives that the FH may consider in lieu of termination, and the criteria the FH will use when deciding what actions to take.

**Part IV: Notification Requirements.** This part presents the federal requirements for disclosure of criminal records to the family prior to termination, the HUD requirements and PHA policies regarding the timing and content of written notices for lease termination and eviction, and notification of the post office when eviction is due to criminal activity. This part also discusses record keeping related to lease termination.

### PART I: TERMINATION BY RESIDENT

#### 13.0 TERMINATION BY RESIDENT [24 CFR 966.4(k)(I)(ii) and 24 CFR 966.4 (I)(1)]

The resident may terminate their Resident Lease Agreement by providing FH with a written thirty-day advance notice as defined in the Resident Lease Agreement. If Resident vacates the unit prior to the end of the 30-day notice, resident will continue to be responsible for paying rent through the end of the 30-day notice.

### PART II: TERMINATION BY THE FH – MANDATORY

#### 13.1 OVERVIEW

HUD requires the FH to terminate the lease in certain circumstances. In other circumstances HUD requires the FH to establish provisions for lease termination, but it is

still the FH option to determine, on a case-by-case basis, whether termination is warranted. For those resident actions or failures to act where HUD requires termination, the FH has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires the FH to terminate the lease.

## **13.2 MANDATORY TERMINATION**

- **Failure To Provide Consent [24 CFR 960.259(a) and (b)]**  
The FH must terminate the lease if any family member fails to sign and submit any consent form s/he is required to sign for any recertification.
- **Failure To Document Citizenship [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]**  
The FH must terminate the lease 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, resulting in no eligible family members; or (3) a family member, as determined by the FH, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3), 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.
- **Failure To Disclose and Document Social Security Numbers [24 CFR 5.218(c), 24 CFR 960.259(a)(3), Notice PIH 2018-24]**  
The FH must terminate the tenancy of Public Housing participants (the entire household) if s/he (including each member of the household required to disclose his/her SSN) does not disclose his/her SSN and provide the required documentation.

However, if the family is otherwise eligible for continued program assistance, and the FH determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the FH may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the FH determined the family to be noncompliant.

The FH will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

The FH will terminate assistance if the family submits falsified documentation.

See Chapter 7 for a complete discussion of documentation and certification requirements.

- **Failure To Accept The FH's Offer Of A Lease Revision [24 CFR 966.4(l)(2)(iii)(E)]**

The FH must terminate the lease if the family fails to accept the FH's offer of a lease revision to an existing lease.

- **Methamphetamine Conviction [24 CFR 966.4(l)(5)(i)(A)]**

The FH must immediately terminate the lease if the FH determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the *premises* of federally-assisted housing. "*Premises*" is defined as the building or complex in which the dwelling unit is located, including common areas and grounds.

- **Lifetime Registered Sex Offenders [Notice PIH 2012-28]**

Should FA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, FH must immediately terminate assistance for the household member.

In this situation, FH must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, FH must terminate assistance for the household.

- **Noncompliance With Community Service Requirements [24 CFR 966.4(l)(2)(iii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]**

The FH is prohibited from renewing the lease at the end of the 12-month lease term when the family fails to comply with the community service requirements as described in Chapter 11.

- **Death of a Sole Family Member [Notice PIH 2012-10]**

The FH must immediately terminate program assistance for deceased single member households.

### **PART III: TERMINATION BY FH – OTHER AUTHORIZED REASONS**

## **13.3 OVERVIEW**

HUD requires the FH to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse, and certain household obligations stated in the regulations. The FH has the discretion to consider circumstances surrounding the violation or, in applicable situations, whether the offending household member has entered or completed rehabilitation, and the FH may, as an alternative to termination, require the exclusion of the culpable household member.

In addition, HUD authorizes the FHs to terminate the lease for other grounds, but for only those grounds that constitute serious or repeated violations of material terms of the lease or that are for other good cause. In the development of the terms of the lease, the FH will consider the limitations imposed by state and local landlord-resident law, as well as HUD regulations and federal statutes.

FH also has the option to terminate the tenancies of over-income families.

### 13.4 MANDATORY LEASE PROVISIONS [24 CFR 966.4(l)(5)]

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations. Although the provisions are required, HUD does not require the FH to terminate for such violations in all cases, therefore the FH policies are needed.

#### **Definitions [24 CFR 5.100]**

The following definitions will be used for this and other parts of this chapter:

***Affiliated individual*** is defined in section 16.25.

***Covered person*** means a resident, any member of the resident's household, a visitor guest, or any other person under the resident's control.

***Dating violence*** is defined in Chapter 3, Section 16.25

***Domestic violence*** is defined in Chapter 3, Section 16.25

***Drug*** means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].

***Drug-related criminal activity*** means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug.

***Guest*** means a person temporarily staying in the unit with the consent of a resident or other member of the household who has express or implied authority to so consent on behalf of the resident.

***Household*** means the family including FH-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD-50058, Instruction Booklet, p. 65].

***Other person under the resident's control*** means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the resident or other member of the household who has express or implied authority to so consent on behalf of the resident. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the resident's control*.

***Premises*** mean the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

***Sexual assault*** is defined in section 16.25.

***Stalking*** is defined in Chapter 3, Section 16.25

**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.

**Pattern of abuse** is defined as the use and/or possession of a controlled substance or alcohol if there is more than three (3) incidents during the previous 24 months.

**Incident** includes but is not limited to arrest, convictions, no contest pleas, fines and city ordinance violations.

**Currently engaged in** as any use or possession of illegal drugs during the previous twelve months.

**Abusive or violent behavior** includes verbal as well as physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language (written or oral) that is customarily used to insult or intimidate, may be cause for denial of admission.

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

### 13.5 TERMINATION BY FH – OTHER AUTHORIZED REASONS

The lease may be terminated at any time by the FH who shall give written notice for serious or repeated violation of the terms of the lease such as, but not limited to:

- **Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)]**

FH will terminate the lease for drug-related criminal activity engaged in on or off the premises by any resident, member of the resident's household, visitor or guest, and any such activity engaged in on the premises by any other person under the resident's control.

FH defines "drug related criminal activity" as the illegal manufacture, sale, distribution or use of, or possession with the intent to manufacture, sell, distribute or use, a controlled substance.

FH will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.

- **Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)]**

FH will terminate the lease in cases where the FH determines there is reasonable cause to believe that a family member, or a guest of a family member, is illegally using or in possession of a controlled substance or engages in drug-related criminal or violent criminal activity or the FH determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

FH defines “pattern of illegal drug use/abuse” as more than three (3)-incidents of any use of illegal drugs during the previous 24 months (see Chapter 3, Section 3.25).

FH will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.

- **Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]**

The same will apply if it is determined that a family member, visitor or a guest of a family member, abuses alcohol in a way that interferes with the health, safety or right to peaceful enjoyment of the premises by other residents.

A pattern of such alcohol abuse means more than three (3) incidents of any such abuse of alcohol during the previous 24 months. (see Chapter 3, Section 3.25).

FH will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.

- **Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)]**

The FH will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or by persons residing in the immediate vicinity of the premises.

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

FH defines “abusive or violent behavior” as verbal or physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language (written or oral) that is customarily used to insult or intimidate, may be cause for termination of assistance.

“Threatened” refers to oral or written threats or physical gestures that communicate an intent to abuse or commit violence.

Actual physical abuse or violence will always be cause for termination of assistance.

- **Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]**

FH will terminate the lease if the FH determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

FH will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

A conviction for drug-related or violent criminal activity will be given more weight than an arrest for such activity,

An arrest record, however, can trigger an inquiry into whether there is sufficient evidence for the FH to determine that a person engaged in disqualifying criminal activity, but is not itself evidence on which to base a determination. FH will utilize other evidence, such as police reports detailing the circumstances of the arrest, witness statements, and other relevant documentation to assist them in making a determination that disqualifying conduct occurred. Reliable evidence of a conviction for criminal conduct that would disqualify an individual for tenancy may also be the basis for determining that the disqualifying conduct is fact occurred [PIH 2015-19]

Committing of any of the above acts is a material breach of the lease and may result in termination of tenancy on three days' notice.

### **13.6 OTHER SERIOUS OR REPEATED VIOLATIONS OF MATERIAL TERMS OF THE LEASE – MANDATORY LEASE PROVISIONS [24 CFR 966.4(L)(2)(i) AND 24 CFR 966.4(F)]**

FH will terminate the lease for the following violations of resident obligations under the lease:

- Nonpayment of rent or other charges due under the Lease, or chronic late payment of rent (4-times in 12 months is considered chronic);
- Failure to provide timely and accurate statements of income, assets, expenses and family composition at Admission, Interim, Special or Annual Rent Recertification's;
- Assignment or subleasing of the premises or providing accommodation for boarders or lodgers;
- Use of the premises for purposes other than solely as a dwelling unit for the Resident and Resident's household as identified in this Lease, except as approved by the FH for a home based occupation;
- Failure to abide by reasonable rules made by the FH for the benefit and well-being of the housing development and the Residents;
- Failure to abide by applicable building and housing codes materially affecting health or safety;
- Failure to dispose of garbage waste in designated trash container;
- Failure to use electrical, plumbing, sanitary, heating, ventilating, air conditioning and other equipment, in a safe manner;
- Acts of destruction, defacement or removal of any part of the premises, or failure to cause guests to refrain from such acts;
- Failure to pay reasonable charges (other than for normal wear and tear) for the repair of damages to the premises, development buildings, facilities, equipment, or common areas, caused by the resident, member (s) of the household and/or guest (s);

- To act, and cause household member (s) and/or guest (s) to act, in a manner which will not disturb other residents' peaceful enjoyment
- Non-compliance with any assistance programs, governmental agency and/or law enforcement.

### 13.7 OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(l)(2) and (5)(ii)(B)]

HUD authorizes the FH to terminate the lease for reasons other than those described in the previous sections. These reasons are referred to as "other good cause."

#### **Other Good Cause [24 CFR 966.4(l)(2)(ii)(B) and (C)]**

HUD regulations state that FH may terminate tenancy for other good cause. The Violence against Women Reauthorization Act of 2013 explicitly prohibits FH from considering incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking as "other good cause" for terminating the tenancy or occupancy rights of the victim of such violence. FH will terminate the lease for the following reasons:

- ***Fugitive Felon or Parole Violator.*** If a resident or guest is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or 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.
- ***Persons subject to sex offender registration requirement.*** If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.

For families, failure to remove any household member(s) that are subject to a sex offender lifetime registration under a State sex offender registration program will result in eviction of the family.

- Discovery after admission of facts that made the resident ineligible
- Discovery of material false statements or fraud by the resident in connection with an application for assistance or with reexamination of income
- Failure to furnish such information and certifications regarding family composition and income as may be necessary for the FH to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size
- Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the FH that such a dwelling unit is available
- Failure to permit access to the unit by the FH after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists

- Failure to promptly inform the FH of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within 10 business days of the event.
- Failure to abide by the provisions of the FH pet policy
- If the family has breached the terms of a repayment agreement entered into with the FH
- If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.
- If a **covered person** has engaged in or threatened violent or abusive behavior toward the FH personnel, vendor and/or contractors.  
**Abusive or violent behavior towards FH personnel, vendor and/or contractors** 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.

- **Family Absence from Unit** [24 CFR 982.551(i)]  
The family must supply any information or certification requested by the FH to verify that the family is living in the unit, or relating to family absence from the unit, including any FH-requested information or certification on the purposes of family absences. The family must cooperate with the FH for this purpose.

The family must promptly notify the FH when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 60 calendar days in a 12-month period. In such a case promptly means within 10 business days of the start of the extended absence.

**Abandonment.** If the entire family is absent from the unit more than 14 consecutive days, whether or not rent has been paid, the FH will consider the family to have abandoned the unit. The FH will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, the FH will secure the unit immediately to prevent vandalism and other criminal activity.

**Over-Income Families [24 CFR 960.261; FR Notice 07/26/2018; Notice PIH 2019-11]**

The Housing Opportunity Through Modernization Act (HOTMA) of 2016 placed an income limitation on public housing tenancies. The over-income requirement states that after a family's adjusted income has exceeded 120 percent of area median income (AMI) (or a different limitation established by the secretary) for two (2) consecutive years. PHA must either terminate the family's tenancy within six months of the determination, or charge the family a monthly rent that is higher of the applicable market rent (FMR) or the amount of monthly subsidy for the unit, including amounts from the capital funds, as determined by regulations.

Notice PIH 2019-11 also requires that PHAs publish over-income limits in their ACOP and update them no later than 60 days after HUD publishes new income limits each year. The over-income limit is calculated by multiplying the very low-income (VLI) by 2.4, as adjusted for family size.

PHAs also have discretion, under 24 CFR 960.261, to adopt policies allowing termination of tenancy for families whose income exceeds the limit for program eligibility. Such policies would exempt families participating in the Family Self-Sufficiency (FSS) program or currently receiving the earned income disallowance.

### **FH Policy**

At annual or interim reexamination, if a family's income exceeds the applicable over-income limit, the PHA will document the family file and begin tracking the family's over-income status.

If one year after the applicable annual or interim reexamination the family's income continues to exceed the applicable over-income limit, FH will notify the family in writing that their income has exceeded the over-income limit for one year, and that if the family continues to be over-income for 12 consecutive months, the family will be subject to the FH's over-income policies.

If two years after the applicable annual or interim reexamination the family's income continues to exceed the applicable over-income limit, the FH will charge the family a rent that is the higher of the applicable fair market rent (FMR) or the amount of monthly subsidy for the unit. The FH will notify the family in writing of their new rent amount. The new rent amount will be effective 30 days after the PHA's written notice to the family.

If, at any time, an over-income family experiences a decrease in income, the family may request an interim redetermination of rent in accordance with FH policy. If, as a result, the previously over-income family is now below the over-income limit, the family is no longer subject to over-income provisions as of the effective date of the recertification. The FH will notify the family in writing that over-income policies no longer apply to them. If the family's income later exceeds the over-income limit again, the family is entitled to a new two-year grace period.

FH will begin tracking over-income families once these policies have been adopted, but no later than March 24, 2019.

FH may terminate tenancy for families whose income exceeds the limit for the program eligibility as described at 24 CFR 960.261.

FH will use HUD's income limits published annually to determine the applicable over-income limits at 120 percent of the Very Low-Income (VLI) by family size. These numbers will be updated within 60 days of HUD publishing new income limits each year and will be effective for all annual and interim reexaminations. [PIH 2019-11]

### 13.8 ALTERNATIVES TO TERMINATION OF TENANCY

#### **Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)]**

In evaluating whether to terminate the lease, the FH will give fair consideration to the seriousness of the activity, and/or likelihood of favorable conduct in the future (including evidence of rehabilitation).

FH will also consider whether:

- The person demonstrates successful completion of a credible rehabilitation program approved by the FH, and is willing to continue in a supportive program approved by the FH; or
- The individual involved in drug-related criminal activity is no longer in the household due to incarceration.

If FH determines not to terminate the lease, and permit continued occupancy, the FH may require the family accept imposed conditions such as that the involved family member(s) does not reside in or visit the unit. The FH will consider evidence that the person is no longer in the household such as a divorce decree/incarceration/ death/ copy of a new lease for the person including the owner's telephone number and address/ or other substantiating evidence.

If a family member is terminated from assistance due to an arrest for a criminal charge, the family may be re-instated upon documentation that the criminal charge was dismissed or the person was found "not guilty" by a court of law.

#### **Repayment of Family Debts**

If a family owes amounts to the FH, as a condition of continued occupancy, the FH will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the FH of the amount owed

### 13.9 CRITERIA FOR DECIDING TO TERMINATE TENANCY

FH will consider all of the circumstances relevant to a particular case before making a decision, to terminate a tenancy, except as explained in Part II of this chapter,

#### **Evidence [24 CFR 982.553(c)]**

For criminal activity, HUD permits the FH to terminate the lease 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, and without satisfying the standard of proof used for a criminal conviction.

FH 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 966.4(l)(5)(vii)(B)]**

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that the FH may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease.

Such relevant circumstances can also be considered when terminating the lease for any other reason.

FH may consider the following factors before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:

- The seriousness of the offending action, especially with respect to how it would affect other residents
- The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or (as discussed further in section 13.10) a victim of domestic violence, dating violence, sexual assault or stalking
- The effects that the eviction will have on other family members who were not involved in the action or failure to act
- The effect of the FH's decision on the integrity of the public housing program
- The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action
- 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 program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family.

**Consideration of Rehabilitation [24 CFR 966.4(l)(5)(vii)(D)]**

HUD authorizes the FHs to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, the FH will 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.

For this purpose, FH will require the resident 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.

**Reasonable Accommodation [24 CFR 966.7]**

If the family includes a person with disabilities, the FH's decision to terminate the family's lease is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

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

**Nondiscrimination Limitation [24 CFR 966.4(l)(5)(vii)(F)]**

FH's eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

**13.10 PROHIBITION AGAINST TERMINATING TENANCY OF VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT AND STALKING [24 CFR 5.2005(b)]**

This section addresses the protections against termination of tenancy that the Violence against Women Act of 2013 (VAWA) provides for public housing residents who are victims of domestic violence, dating violence, sexual assault, or stalking.

**VAWA Protections against Termination [24 CFR 5.2005(c)]**

VAWA provides that no person may deny assistance, tenancy, or occupancy rights to public housing to a resident solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the resident or any guest or other person under the control of the resident, if the resident or affiliated individual is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking [FR Notice 8/6/13].

VAWA further provides that incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking may not be construed either as serious or repeated violations of the lease by the victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence. violence [24 CFR 5.2005(c)(1), FR Notice 8/6/13].

**Definitions**

For the definitions of *domestic violence*, *dating violence*, *stalking*, and *immediate family member*, see section 3.34

**VAWA and Other Laws [24 CFR 5.2009, 24 CFR 5.2005(d)]**

VAWA does not supersede any other federal, state, or local law that provides greater protection to victims of domestic violence, dating violence, sexual assault or stalking.

Moreover, VAWA does not limit FH's duty to honor court orders issued to protect a victim or to address the distribution of property when a family breaks up.

**Limits on VAWA Protections [24 CFR 5.2005(d), 24 CFR 5.2005(e)]**

While VAWA prohibits FH from using domestic violence, dating violence, sexual assault or stalking as the cause for a termination or eviction action against a public housing resident who is the victim of the abuse, the protections it provides are not absolute. Specifically:

- VAWA does not limit FH's otherwise available authority to terminate assistance to or evict a victim for lease violations not premised on an act of domestic violence, dating violence, sexual assault or stalking providing that the FH does not subject the victim to a more demanding standard to which it holds other residents.
- VAWA does not limit FH's authority to terminate the tenancy of any public housing resident if the FH can demonstrate an actual and imminent threat to other residents or those employed at or providing service to the property if that resident's tenancy is not terminated.

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- (1) The duration of the risk
- (2) The nature and severity of the potential harm
- (3) The likelihood that the potential harm will occur
- (4) The length of time before the potential harm would occur [24 CFR 5.2005(e)]

In determining whether a public housing resident who is a victim of domestic violence, dating violence, sexual assault or stalking is an actual and imminent threat to other residents or those employed at or providing service to a property, the FH will consider the following, and any other relevant, factors:

- Whether the threat is toward an employee or resident other than the victim of domestic violence, dating violence, sexual assault or stalking
- Whether the threat is a physical danger beyond a speculative threat
- Whether the threat is likely to happen within a short period of time
- Whether the threat to other residents or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location

If the resident wishes to contest the FH's determination that he or she is an actual and imminent threat to other residents or employees, the resident may do so as part of the grievance hearing or in a court proceeding.

**Victim Notification [Notice PIH 2017-08 (HA)]**

VAWA requires FH to notify residents of their rights under VAWA and to inform them about the existence of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking, and Alternate Documentation. (For general VAWA notification policies, see Chapter 16-Part VII.)

- FH will include language discussing the protections provided by VAWA in the termination or eviction notice and request that a resident come to the FH office and pick up the form HUD-5382, if the resident believes the VAWA protections apply.
- If FH has reason to suspect that the form HUD-5382 might place a victim of domestic violence at risk, it will attempt to deliver the notice by hand directly to the victim. FH will use the same caution if it decides to deliver VAWA information to a victim at any other time following an incident of domestic violence.

**Victim Documentation [Notice PIH 2017-08 (HA)]**

When a resident family is facing lease termination because of the actions of a resident, household member, guest, or other person under the resident's control and a resident or immediate family member of the resident's family claims that she or he is the victim of such actions and that the actions are related to domestic violence, dating violence, sexual assault or stalking, the FH will request in writing that the individual submit documentation affirming that claim. The written request will include explicit instructions on where, when, and to whom the documentation must be submitted. It will also state the consequences for failure to submit the documentation by the deadline.

The documentation will consist of a completed and signed VAWA form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking, and Alternate Documentation. In lieu of the certification form, the FH will accept either of the following forms of documentation:

A police or court record documenting the actual or threatened abuse;

Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical or other knowledgeable professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The individual claiming victim status must submit the requested documentation within 14 business days after receipt of the FH's written request or must request an extension within that timeframe. FH may, at its discretion, extend the deadline for 10 business days.

If the individual provides the requested documentation within 14 business days, or any FH-approved extension, the FH will reconsider its termination decision in light of the documentation.

If the individual does not provide the requested documentation within 14 business days, or any FH-approved extension, the FH will proceed with termination of the family's lease in accordance with applicable local, state, and federal law and the policies in this ACOP.

**Terminating or Evicting a Perpetrator of Domestic Violence [24 CFR 5.2005(c)]**

Although VAWA provides protection from termination for victims of domestic violence, it does not provide such protection for perpetrators. FH will bifurcate a family's lease and terminate the tenancy of a family member if FH determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the tenancy or program assistance of the remaining, nonculpable family members.

In making its decision, FH will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted to the FH by the victim in accordance with this section. Upon such consideration, the FH may, on a case-by-case basis, choose not to bifurcate the lease and terminate the tenancy of the culpable family member.

If FH does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with the lease, applicable law, and the policies in this ACOP. If necessary, the FH will also take steps to ensure that the remaining family members have a safe place to live during the termination process. For example, the FH may offer the remaining family members another public housing unit, if available; it may help them relocate to a confidential location; or it may refer them to a victim service provider or other agency with shelter facilities.

If the person removed from the lease was the only tenant eligible to receive assistance, FH must provide any remaining resident a chance to establish eligibility for the unit. If the remaining resident cannot do so, the FH must provide the tenant reasonable time to find new housing or to establish eligibility for another housing program covered by VAWA 2013.

**FH Confidentiality Requirements [24 CFR 5.2007(c)(1)(v)]**

All information provided to the FH regarding domestic violence, dating violence, sexual assault 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 FH will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

## **PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING**

### **13.11 OVERVIEW**

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. This part discusses those requirements and the specific requirements that precede and follow termination for certain criminal activities which are addressed in the regulations. This part also discusses specific requirements pertaining to the actual eviction of families and record keeping.

### **13.12 CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]**

The FH will conduct criminal records checks at time of admission and part of the annual recertification process for continued occupancy or when it has come to the attention of the FH, either from local law enforcement or by other means that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information. In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

The FH will not pass along to the resident the costs of a criminal records check.

### **13.13 DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)]**

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the designated management staff will notify the household in writing of the proposed adverse action and will provide the subject of the record and the resident a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

The family will be given 10 business days from the date of the FH notice, to dispute the accuracy and relevance of the information. If the family does not contact the designated management staff to dispute the information within that 10 business day period, the FH will proceed with the termination action.

Should the resident not exercise their right to dispute prior to any adverse action, the resident still has the right to dispute in the grievance hearing or court trial.

### **13.14 LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3)]**

#### **Form, Delivery, and Content of the Notice**

FH's written notice of lease termination will state the reason for the proposed termination, the date of termination, and the rights and protections afforded the resident by the regulations and this policy and their right to examine FH documents directly relevant to the termination or eviction. If the FH does not make the documents available for

examination upon request by the resident, the FH may not proceed with the eviction [24 CFR 966.4(m)].

When the FH is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with the FH's grievance procedure. In these cases, the tenancy shall not terminate until the time for the resident to request a grievance hearing has expired and the grievance procedure has been completed.

When the FH is not required to offer the resident an opportunity for a grievance hearing because the lease termination is for criminal activity that threatens health, safety or right to peaceful enjoyment or for drug-related criminal activity, the notice of lease termination must state that the resident is not entitled to a grievance hearing on the termination. It must specify the judicial eviction procedure to be used by the FH for eviction of the resident, and state that HUD has determined that the eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations. The notice must also state whether the eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the FH, or for a drug-related criminal activity on or off the premises.

The FH will attempt to deliver notices of lease termination directly to the resident or an adult member of the household or posted on the unit; and in all cases sent by first class mail addressed to the resident at the unit on the same date. (For terminations related to domestic violence, see also the policy under "Victim Notification" in section 13.10.)

All notices of lease termination will include a statement of the protection against termination provided by the Violence against Women Reauthorization Act of 2013 (VAWA) for victims of domestic violence, dating violence, sexual assault or stalking. The FH will also include a copy of the form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking maybe obtain at the site office. Any family member who claims that the cause for termination involves (a) criminal acts of physical violence against family members or others or (b) incidents of domestic violence, dating violence, sexual assault or stalking of which a family member is the victim will be given the opportunity to provide documentation in accordance with the policies in section 13.10.

#### **Timing of the Notice [24 CFR 966.4(l) (3) (i)]**

If the FH terminates the lease, written notice will be given as follows:

- Fourteen (14) calendar days in the case of failure to pay rent;
- Three (3) calendar days:
  - If any member of the household has engaged in any drug-related criminal activity. or violent criminal activity;
  - Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity;
  - If the health or safety of other residents, FH employees, property management

staff, or persons performing a contract administration function or responsibility on behalf of the FH (including a FH contractor, subcontractor or agent) or persons residing in the immediate vicinity of the premises is threatened; or

- If any member of the household has engaged in a Violent Criminal activity.
- If any member of the household has been convicted of a felony;
- Thirty (30) calendar days in all other cases:

Period of time prohibited from admission or continued occupancy for 2a, 2b and 2c above would be up to three years from the date of the offense.

Period of time prohibited from admission for item “d” above would be up to three years from the date of offense; however, depending upon the seriousness of the crime committed the prohibition would be up to seven years from the date of the offense.

Period of time prohibited for admission for item “e” above would be five years from the date of offense; however, depending upon the seriousness of the felony committed the prohibit would be up to seven years from the date of the offense.

The Notice to Vacate that may be required under state or local law may be combined with or run concurrently with the notice of lease termination.

**Notice of Nonrenewal Due to Community Service Noncompliance [24 CFR 966.4(l)(2) (iii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]**

When the FH finds that a family is in noncompliance with the community service requirement, the resident and any other noncompliant resident must be notified in writing of this determination. Notices of noncompliance will be issued in accordance with the requirements and policies in Chapter 11.

If after receiving a notice of initial noncompliance the family does not request a grievance hearing, or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement, and is still in noncompliance after being provided the 12-month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Chapter 11, and will also serve as the notice of termination of tenancy.

**Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]**

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family’s eligibility for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, the family’s 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 the family’s right to request an informal hearing with the FH either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see

Chapter 14 for the FH's informal hearing procedures.

### **13.15 EVICTION [24 CFR 966.4(l) (4) and 966.4(m)]**

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, the FH will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.

If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, the FH will seek the assistance of the court to remove the family from the premises as per state and local law.

The FH may not proceed with an eviction action if the FH has not made available the documents to be used in the case against the family, and has not afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(l)(3) and (m).

### **13.16 NOTIFICATION TO POST OFFICE [24CFR 966.4(l)(5)(iii)(B)]**

Following the eviction for criminal activity, including drug-related criminal activity, the FH shall notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

### **13.17 RECORD KEEPING**

A written record of every termination and/or eviction will be maintained by the FH at the development where the family was residing, and will contain the following information:

- Name of resident, number and identification of unit occupied
- Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently
- Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail (other than any criminal history reports obtained solely through the authorization provided in 24 CFR 5.903 and 5.905)
- Date and method of notifying the resident
- Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions.

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## CHAPTER 14 – GRIEVANCES AND APPEALS [24 CFR 966.50–966.57]

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### INTRODUCTION

This chapter describes the policies to be used when applicants or residents disagree with a FH decision. It is the policy of the FH that all applicants and residents have the benefit of all appeal/grievance rights due to them under the law. The policies are discussed in the following three parts:

**Part I: Informal Hearings for Public Housing Applicants.** This part outlines the requirements and procedures for informal hearings for public housing applicants.

**Part II: Informal Hearings with Regard to Noncitizens.** This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and resident grievances.

**Part III: Grievance Procedures for Public Housing Residents.** This part outlines the requirements and procedures for handling grievances for public housing residents.

### PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

#### 14.0 OVERVIEW

When FH makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except with regard to citizenship status, to be covered in Part II). This part discusses FH policies necessary to respond to applicant appeals through the informal hearing process.

#### 14.1 INFORMAL HEARING PROCESS [24 CFR 960.208(A) AND PH OCC GB, P. 58]

##### **Notice of Denial [24 CFR 960.208(a)]**

Applicants who are determined ineligible because they do not meet FH's admission standards, will be given prompt written notification stating the reason for the determination and the procedure for requesting an informal hearing.

When denying eligibility for admission, the FH must provide the family a notice of VAWA rights (VAWA form HUD-5380) as well as the HUD VAWA self-certification form (VAWA form HUD-5382) in accordance with the Violence against Women Reauthorization Act of 2013, and as outlined in 16-VII.C. The notice and self-certification form must accompany the written notification of the denial of eligibility determination.

Prior to notification of denial based on information obtained from criminal or sex offender

registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial.

### **Scheduling an Informal Hearing**

Applicants must submit their request for an informal hearing in writing to FH within ten business days from the date of the notification of their ineligibility.

Except for an applicant caused delay(s), if an applicant requests an informal hearing, the FH will schedule the hearing to be held within ten business days from receiving the request. FH will notify the applicant of the time, date, and location.

### **Conducting an Informal Hearing [PH Occ GB, p. 58]**

An impartial hearing officer will conduct informal hearings. The person who is designated as the hearing officer cannot be the person who made the determination of ineligibility or a subordinate of such person.

### **Informal Hearing Decision [PH Occ GB, p. 58]**

The hearing officer will consider documentation or evidence provided by the applicant and data compiled by FH. The hearing officer will make a determination based upon the merits of the evidence presented by both sides. Within ten (10) business days of the date of the hearing, the hearing officer will mail a written decision to the applicant and place a copy of the decision in the applicant's file.

- If the informal hearing decision overturns the denial, processing for admission will resume.
- If the family fails to appear for their informal hearing, the denial of admission will stand.
- If the decision is upheld, the application will remain denied.

The grievance procedure for public housing residents is not applicable to applicants, and applicants have no rights under the FH's grievance procedures.

### **Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]**

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and FH must consider such accommodations. FH must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

## **PART II: INFORMAL HEARINGS WITH REGARD TO NONCITIZENS**

### **14.2 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. These special hearings are referred to in the regulations, as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

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 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 13, the notice of denial or termination of assistance for noncitizens must advise the family of any of the following that apply:

- 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 resident, 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 FH 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.

#### **United States Citizenship and Immigration Services Appeal Process [24 CFR 5.514(e)]**

If a family member or applicant claims to be an eligible immigrant and the USCIS search does not verify the claim, FH notifies the applicant or resident within ten (10) business days of their right to appeal to the USCIS within thirty (30) days or to request an informal hearing with FH either in lieu of or subsequent to the USCIS appeal.

If the family or applicant appeals to the USCIS, they must provide FH a copy of the written request for appeal and proof of mailing within ten (10) business days of sending the request to USCIS or FH may proceed to deny or terminate.

The time period to request an appeal may be extended by FH for good cause. The request for a FH hearing must be made within ten (10) business days of receipt of the notice offering the hearing or, if an appeal was made to the USCIS, within thirty (30) business days of receipt of the USCIS decision.

#### **Informal Hearing Procedures for Applicants & Residents [24 CFR 5.514(f)]**

After receipt of a request for an informal hearing, the hearing is conducted as described in the "Grievance Procedures" section of this chapter for both applicants and residents.

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, an applicant family or resident may request that the provide a hearing. The request for a hearing must be made either within 30 days of receipt of the FH notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.

The informal hearing procedures for applicant families and residents are described below.

### ***Informal Hearing Officer***

FH 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.

### ***Evidence***

The family will 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 FH 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.

The family must request discovery of FH documents no later than 12:00 p.m. on the business day prior to the hearing.

The family will 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 will also be provided the opportunity to refute evidence relied upon by FH, and cross-examine all witnesses on whose testimony or information FH 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 the FH, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, FH is still obligated to provide oral translation services in accordance with its LEP Plan.

### ***Recording of the Hearing***

FH will not provide a transcript of an audio taped informal hearing.

### ***Hearing Decision***

FH must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision.

If the hearing officer decides that the individual is not eligible, and there are no other eligible family members FH will deny the applicant family.

If there are eligible members in the family, the FH will offer to prorate assistance or give the family the option to remove the ineligible members.

All other complaints related to eligible citizen/immigrant status:

- If any family member fails to provide documentation or certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide, the family will be denied assistance.
- Participants whose assistance is pro-rated (either based on their statement that some members are ineligible or due to failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing based on the right to a hearing regarding determinations of Resident Rent and Total Resident Payment.
- Families denied or terminated for fraud in connection with the non-citizens' rule are entitled to a review or hearing in the same way as terminations for any other type of fraud.

***Retention of Documents for Applicants [24 CFR 5.514(h)]***

FH must retain for a minimum of 5 years the following documents that may have been submitted to FH by the family, or provided to the FH as part of the USCIS appeal or FH informal hearing process:

1. The application for assistance
2. The form completed by the family for income reexamination
3. Photocopies of any original documents, including original USCIS documents
4. The signed verification consent form
5. The USCIS verification results
6. The request for a USCIS appeal
7. The final USCIS determination
8. The request for an informal hearing
9. The final informal hearing decision

***Retention of Documents for Residents [24 CFR 5.514(h)]***

FH must retain for a minimum of 5 years the following documents that may have been submitted to FH by the family, or provided to the FH as part of the USCIS appeal or FH informal hearing process:

10. The application for assistance
11. The form completed by the family for income reexamination
12. Photocopies of any original documents, including original USCIS documents
13. The signed verification consent form

14. The USCIS verification results
15. The request for a USCIS appeal
16. The final USCIS determination
17. The request for an informal hearing
18. The final informal hearing decision

## **PART II: GRIEVANCE PROCEDURES**

### **14.3 REQUIREMENTS [24 CFR 966.52]**

FH must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any FH action or failure to act involving the lease or FH policies which adversely affect their rights, duties, welfare, or status. The FH must not only meet the minimal procedural due process requirements provided under the regulations, but must also meet any additional requirements imposed by local, state or federal law.

FH grievance procedure will be incorporated by reference in the Resident Lease Agreement.

### **14.4 DEFINITIONS**

#### ***Grievance***

Any dispute that a resident may have with respect to an FH action or failure to act in accordance with the individual resident's lease or FH regulations that adversely affects the individual resident's rights, duties, welfare, or status. Grievance does not include disputes between residents not involving the FH; to class grievances such as rent strikes; as a forum for initiating or renegotiating policy changes between groups of residents and the FH Board of Commissioners; nor to an eviction based upon violent criminal activity or drug-related criminal activity.

#### ***Complainant***

Any resident, whose grievance is presented to FH or at the site/management office.

#### ***Due Process Determination***

A determination by HUD that law of the jurisdiction requires that the resident must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit.

#### ***Elements of Due Process***

An eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:

- Adequate notice to the resident of the grounds for terminating the tenancy and for eviction
- Right of the resident to be represented by counsel

- Opportunity for the resident to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the resident may have
- A decision on the merits

### **Hearing Officer**

An impartial person or persons selected by the FH, other than the person who made or approved the decision under review, or a subordinate of that person. The individual or individuals do not need legal training.

### **Resident**

- The adult person (or persons) (other than a live-in aide)
- Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
- Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit

### **VAWA**

An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy rights of the victim of such violence.

Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a resident's household or any guest or other person under the resident's control, shall not be cause for termination of the tenancy, if the resident, or immediate member of the resident's family is a victim of that domestic violence, dating violence, or stalking.

## **14.5 APPLICABILITY [24 CFR 966.51]**

This Grievance Procedure applies to all individual grievances, except any grievance concerning a termination of tenancy or eviction that involves:

- (a) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or FH employees, or
- (b) Any violent or drug-related criminal activity on or near such premises; or
- (c) Any drug-related criminal activity that resulted in felony conviction of a household member.

### **FH Policy**

The FH is located in a HUD-declared due process state. Therefore, the FH will not offer grievance hearings for lease terminations involving criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or

employees of the FH, or for violent or drug-related criminal activity on or off the premises.

## **14.6 INFORMAL HEARING [24 CFR 966.54]**

The purpose of the informal hearing (also referred to as an informal conference and/or initial/informal discussion) is to discuss and to resolve the grievance without the necessity of a formal hearing. A formal hearing is only for current residents.

Any informal hearing request must be presented in writing and submitted to the FH office or to the housing management office that sent the notice on which the decision is based. The written informal hearing request must be signed by the resident/applicant. Except for resident/applicant caused delay(s), the request for an informal hearing must be presented within ten (10) business days after receipt of the notice. It may be simply stated, but shall specify:

1. The particular grounds upon which it is based,
2. The action requested; and
3. The name, address, and telephone number of the complainant, and similar information about the complainant's representative, if any.

FH will provide reasonable accommodation for persons with disabilities to participate in the informal hearing. FH must be notified within three days of the scheduled time if special accommodations are required.

A designated FH representative shall hold an informal hearing with the resident/applicant within ten (10) business days of from receipt of the request.

If the complainant fails to appear within 30 minutes of the scheduled time, FH representative may determine that the complainant has waived their right to a hearing.

When the informal hearing is completed and within (10) business days, the FH representative is to complete a summary report. The report will include the date of the informal hearing, names of participants, nature of the disposition of the complaint and supporting reasons, date on which corrective action will be completed, if necessary, as well as procedures and final date by which a hearing may be obtained if the matter has not been resolved at this level. One copy will be filed in the resident/applicant's file.

### **1. Dissatisfaction with Informal Hearing**

If the resident, also known as the complainant, is dissatisfied with the proposed disposition of the grievance, s/he shall submit a written request for a formal hearing within ten (10) business days of the date of the summary of the informal meeting.

The request must specify the reason for the grievance request and the relief sought.

### **2. Failure to Request a Formal Hearing**

If the complainant does not request a formal hearing within ten (10) business days of the date of service of the informal hearing decision, s/he waives his/her right to a hearing, and FH's proposed disposition of the grievance will become final. This section in no way constitutes a waiver of the complainant's right to the FH's disposition in an appropriate judicial proceeding.

#### **14.7 PROCEDURES TO OBTAIN A FORMAL HEARING**

After exhausting the informal hearing procedures outlined above, a complainant shall be entitled to a formal hearing before a hearing officer.

##### **Requests for Hearing and Failure to Request**

The resident must submit a written request for a grievance hearing to the FH within ten (10) business days of the resident's receipt of the summary of the informal hearing [24 CFR 966.56(a)]. The request must specify the reasons for the grievance and the action or relief sought.

If the resident does not request a hearing, FH's disposition of the grievance under the informal hearing process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest FH's action in disposing of the complaint in an appropriate judicial proceeding [24 CFR 966.56(c)].

##### **Scheduling of Hearings [24 CFR 996.56(a)]**

If the complainant complies with the procedures outlined above, a hearing shall be scheduled within a reasonable time by FH.

A written notification of the date, time, place, and procedures governing the hearing shall be delivered to the complainant and the appropriate FH official.

The FH will provide reasonable accommodation for persons with disabilities to participate in the hearing. FH must be notified within three days of the scheduled time if special accommodations are required.

#### **14.8 SELECTION OF HEARING OFFICER [24 CFR 966.53(E)]**

A grievance hearing shall be conducted by an impartial person appointed by the FH other than the person who made or approved the FH action under review, or a subordinate of such person. The FH must describe their policies for selection of a hearing officer in their lease.

Hearing Officer shall be appointed by FH through an approved list of hearing officers or through an organization approved by the Executive Director of FH.

Each party may challenge the hearing officer for good cause and must file an objection stating reason prior to start of hearing.

The designated FH representative will send written notification to the hearing officer with a copy of the grievance/complaint form, the informal hearing summary report, and a copy of the request for formal hearing.

The designated FH representative advises the hearing officer of name(s) and addresses

of all participants.

The hearing officer notifies all parties as to date, time and place of hearing.

#### **14.9 PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]**

##### **Rights of Complainant [24 CFR 966.56(b)]**

The complainant will be afforded a fair hearing and be provided the basic safeguards of due process to include:

- FH shall also have the opportunity to examine and to copy at the expense of FH all documents; records and statements that the resident plans to submit during the hearing to refute FH's inaction or proposed action. Any documents not so made available to FH may not be relied upon at the hearing.
- The right to be represented by counsel or other person chosen as the resident's representative and to have such person makes statements on the resident's behalf.  
Hearings may be attended by the following applicable persons:
  - A FH representative(s) and any witnesses for the FH;
  - The resident and any witnesses for the resident;
  - The resident's counsel or other representative;
  - Any other person approved by the FH as a reasonable accommodation for a person with a disability;
- The right to a private hearing unless the complainant requests a public hearing;
- The right to present evidence and arguments in support of the resident's complaint, to contradict evidence relied on by FH or the site/property management, and to cross-examine all witnesses upon whose testimony or information FH or the site/property management relies;
- A decision based solely and exclusively upon the facts presented at the hearing;

##### **Failure to Appear [24 CFR 966.56(d)]**

The head of household must attend the formal hearing.

If the complainant fails to appear within 30 minutes of the scheduled time, the hearing officer may determine that the complainant has waived their right to a hearing.

If the resident fails to appear and was unable to reschedule the hearing in advance, the resident must contact FH within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the resident can show good cause for the failure to appear, or 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.

#### **14.10 GENERAL PROCEDURES [24 CFR 966.56 (d), (e)],**

The hearing shall be held before a hearing officer.

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter FH must sustain the burden of justifying the FH action or failure to act against which the complaint is directed [24 CFR 966.56(d),(e)] .

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 which is relevant to the case, for example, a letter written to FH. Writings include all forms of recorded communication or representation, including letters, emails, 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.

*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.

Either party may request a tape recording of the hearing. The FH shall provide equipment and an operator for the purpose of recording the hearing. The complainant may secure a duplicate at his/her expense.

#### **Accommodations of Persons with Disabilities [24 CFR 966.56(f)]**

FH must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

#### **Limited English Proficiency (24 CFR 966.56(g))**

FH will comply with HUD's LEP Final Rule in providing language services throughout the grievance process.

### **14.11 DECISION OF THE HEARING OFFICER [24 CFR 966.57]**

The hearing officer shall mail to FH and the complainant a written decision, including the reasons for the decision, within 10 business days following the hearing. FH will place one copy in the resident files. The written decision will be sent to the address provided at the hearing.

The decision of the hearing officer shall be binding on the FH which shall take all actions necessary to carry out the decision, unless the Board of Commissioners' intervene in the matter. The Board of Commissioners may overturn a hearing officer's decision in either of the following two situations:

- The grievance does not concern the FH action or failure to act in accordance with or involving the complainant's lease or FH regulations that adversely affect the complainant's rights, duties, welfare or status.
- The decision of the hearing officer is contrary to applicable Federal, State, or local law, HUD regulations or requirements of the Annual Contributions Contract between HUD and FH.

A decision by the hearing officer or Board of Commissioners in favor of FH or which denies the relief requested by the complainant in whole or part shall not constitute a waiver of, nor affect in any manner whatever, the rights of the complainant to a trial or judicial review in any proceedings which may thereafter be brought in the matter.

Any grievance in which the Resident claims a right under VAWA, a hearing officer will not issue a decision and instead will postpone the hearing until such time as a decision on the VAWA request has been made in compliance with all VAWA references made in this ACOP.

#### **14.12 DECISION OF THE HEARING OFFICER [24 CFR 966.57]**

If a resident has requested a hearing in accordance with these duly adopted Grievance Procedures on a complaint involving a FH notice of termination of tenancy, and the hearing officer upholds the FH action, FH shall not commence an eviction action until the notice of termination of tenancy expires. The notice of termination continues pending the grievance hearing procedures. As the notice of termination continues, rent shall be due and owing during and pending the grievance hearing procedures [24 CFR 966.57(c)].

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## CHAPTER 15 – PROGRAM INTEGRITY

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### INTRODUCTION

Fraud is defined as the intentional, false representation or concealment of a material fact for the purpose of inducing another to act upon it to his or her injury. Fraud and abuse by an applicant or resident therefore, may constitute an intentional misrepresentation of income, assets, and allowances, or intentional misrepresentation of family composition or initiating and participating in bribes or other illegal activities. Intentional may mean a claim that a participant or applicant *knows or has reason to know* is false, fictitious, or fraudulent. *Knows or has reason to know* may mean a person acts in deliberate ignorance of the truth or acts in reckless disregard of the truth or falsity of the claim or statement.

**Part I: Preventing, Detecting, and Investigating Errors and Program Abuse.** This part presents FH policies related to preventing, detecting, and investigating errors and program abuse.

**Part II: Corrective Measures and Penalties.** This part describes the corrective measures the FH must and may take when errors or program abuses are found.

### PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

#### 15.0 PREVENTING ERRORS AND PROGRAM ABUSE

Management and program staff utilize various methods and practices (listed below) to help prevent program abuse, noncompliance, and willful violations of program rules by applicants and participant families. This policy objective is to establish confidence and trust in the management by emphasizing education as the primary means to obtain compliance by participant families.

HUD created the Enterprise Income Verification (EIV) system to provide Housing Authorities with a powerful tool for preventing errors and program abuse. The FH is required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. The FH is further required to:

- Provide applicants and residents with forms:

**“Debts Owed to PHAs and Terminations” [form HUD-52675]:** All adult members of an applicant or participant family are required to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file.

**“Is Fraud Worth It?” [form HUD-1141-OIG]:** which explains the types of actions a family must avoid and the penalties for program abuse.

**“What You Should Know About EIV”:** a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12.

**Program Orientation Sessions:** Mandatory orientations sessions will be conducted by FH staff for all prospective participant families either prior to or upon execution of the lease. At the conclusion of all Program Orientation Sessions, all adults, if applicable, will be required to sign forms HUD-52675 and “What You Should Know About EIV” to confirm that all rules and pertinent regulations were explained to him/her regarding fraud and abuse.

**Participant Family Counseling:** FH staff will routinely provide participant family counseling as a part of the recertification interview in order to clarify any confusion pertaining to program rules and requirements.

**Use of Instructive Sign and Warnings:** Instructive signs will be conspicuously posted in common areas and interview areas to reinforce compliance with program rules and to warn about penalties for fraud and abuse.

**Review and Explanation of Forms:** During interviews, staff will explain all required forms and review the contents of all (re)certification documents prior to signature.

## **15.1 DETECTING ERRORS AND PROGRAM ABUSE**

FH staff will be trained to maintain a high level of alertness to indicators of possible abuse and fraud by assisted families. In addition to taking steps to prevent errors and program abuse, the FH will use a variety of activities to detect errors and program abuse.

### **Quality Control File Reviews.**

All initial certification, files will be reviewed prior to occupancy. During occupancy, a percentage of randomly selected annual recertifications as determined by FH will be reviewed. Such reviews may include, but are not limited to:

- Changes in reported Social Security Numbers or dates of birth.
- Authenticity of file documents.
- Review of signatures for consistency with previously signed file documents.
- Assurance that verification of all income and deduction sources are present.
- Use of available sources of up-front income verification to compare with family-provided information, including HUD’s EIV system 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.
- The FH will compare family-reported income and expenditures to detect possible unreported income.

### **Individual Reporting of Possible Errors and Program Abuse**

Management and program staff (to include maintenance personnel and policing authorities) will be provided information and/or training to maintain high awareness of circumstances which may indicate program abuse or fraud, such as unauthorized persons residing in the household and unreported income and assets, including personal and real property.

### **Public Record Bulletins**

To be reviewed by management and staff.

### **State Wage Data Record Keepers**

Inquiries to State Wage and Employment record keeping agencies as authorized under Public Law 100-628, the Stewart B. McKinley Homeless Assistance Amendments Act of 1988, may be made annually in order to detect unreported wages or unemployment compensation benefits.

### **Credit Bureau Inquiries**

Credit Bureau inquiries may be made in the following circumstances:

- Application Process.
- Annual Re-certification/interims.
- When an allegation is received by the FH wherein unreported income sources are disclosed.
- When a family's expenditures exceed his /her reported income and no plausible explanation is given.

### **Enterprise Income Verification (EIV) Inquiries**

Enterprise Income Verification is a system that enables the FH to verify participant reported income and identify households that may have under reported their household's annual income. EIV inquiries may be made in the following circumstances:

- Annual Re-certification/interims.
- When an allegation is received by the FH wherein unreported income sources are disclosed.
- When a family's expenditures exceed his /her reported income and no plausible explanation is given.

### **Independent Audits and HUD Monitoring**

The FH will use the results reported in any independent audit or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the FH's error detection and abuse prevention efforts.

## 15.2 INVESTIGATING ERRORS AND PROGRAM ABUSE

### **When the FH will Investigate**

The FH does not intend to undertake an inquiry or an audit of a participant family arbitrarily. The FH's expectation is that families will comply with HUD requirements, provisions of the lease, and other program rules. The FH staff will make an effort (formally and informally) to orient and educate all families in order to avoid unintentional violations. However, the FH has a responsibility to HUD, to the community, and to eligible families in need of housing assistance, to monitor residents' lease obligations for compliance and, when indicators of possible abuse come to the FH's attention, to investigate such claims.

The FH may initiate an investigation of a participant family in the event of one or more of the following circumstances:

**Referrals, Complaints, or Tips:** Referrals from other agencies, companies or persons which are received by mail, by telephone or in person, which allege that a participant family is in noncompliance with, or otherwise violating the lease or the program rules. Such follow-up will be made providing that the referral contains at least one item of information that is independently verifiable. A notation of the allegation will be retained in the participant family file.

**Internal File Review:** If the FH staff discovers (as a function of a (re)certification, an interim certification or a quality control review), information or facts which conflict with previous file data, the FH's knowledge of the family, or is discrepant with statements made by the family.

**Verification or Documentation:** If the FH receives independent verification or documentation, which conflicts with representations in the participant family file (such as public record information, credit bureau reports, police reports or reports from other agencies).

In order for the FH 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.

The FH 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 960.259]**

FH may investigate possible instances of error or abuse using all available PHA and public records. If necessary, the FH will require applicant/resident families to give consent to the release of additional information.

### **Analysis and Findings**

FH 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 the FH will determine (1) Whether an error or program abuse has occurred, (2) Whether any amount of money is owed to the FH, and (3) What corrective measures or penalties will be assessed.

### **Consideration of Remedies**

In the case of family-caused errors or program abuse, the FH 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.

### **Notice and Appeals**

The FH 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 the PHA determined the error or program abuse(s), (3) the remedies to be employed, and (4) the family's right to appeal the results through an informal hearing or grievance hearing (see Chapter 14).

## **15.3 FH HANDLING OF ALLEGATIONS OF POSSIBLE ABUSE AND FRAUD**

Staff will encourage all families to report suspected abuse to FH. All allegations, complaints and tips will be carefully evaluated in order to determine if they warrant follow-up. The FH will not follow up on allegations which are vague or otherwise nonspecific. They will only review allegations, which contain one or more independently verifiable fact.

### **Preliminary File Review**

An internal file review will be conducted to determine if the subject of the allegation is a participant family of an assisted program and, if so, to determine whether or not the information reported has been previously disclosed by the family.

It will then be determined if the FH is the most appropriate authority to do a follow-up (more so than police or social services). Any file documentation of past behavior as well as corroborating complaints will be evaluated.

### **Conclusion of Preliminary Review**

If, at the conclusion of the preliminary file review, there is/are fact(s) contained in the allegation which conflict with file data, and the fact(s) are independently verifiable, the staff person who discovered the discrepancy will initiate an investigation to determine if the allegation is true or false.

### **Interviews with Head of Household and/or Family Members**

The FH staff person will discuss the allegation (or details thereof) with the head of household and/or family members by scheduling an appointment at the site office. If necessary, an additional staff person may attend such interviews. If appropriate, current consent for release of information forms will be obtained to assist in the FH review.

### **Enterprise Income Verification (EIV) Inquiries**

FH will conduct Enterprise Income Verification inquiries to identify households that may have under reported their household's annual income.

## **15.4 HOW THE FH REVIEWS ALLEGATIONS OF ABUSE AND FRAUD**

If the FH determines that an allegation or referral warrants follow-up, FH staff will conduct the review. The steps taken will depend upon the nature of the allegation and may include, but are not limited to, the items listed below. In all cases, the FH will ensure, where required, that a written authorization from the program participant for the release of information has been obtained.

Credit Bureau Inquiries (CBIs) In cases involving previously unreported income sources, a CBI inquiry may be made to determine if there is financial activity which conflicts with the reported income of the family.

IRS IRS Returns or W-2's may be requested

Verification of Credit In cases where the financial activity conflicts with file data, a Verification of Credit form may be mailed to the creditor in order to determine the unreported income source.

Employers and Ex-Employers Employers or ex-employers may be contacted to verify wages, which may have been previously undisclosed or misreported.

Neighbors/Witnesses Neighbors and/or other witnesses may be interviewed who are believed to have direct or indirect knowledge of facts pertaining to the FH's review.

Other Agencies Investigators, caseworkers or representatives of other benefit agencies may be contacted.

Public Records If relevant, the FH will review public records kept in any jurisdictional courthouse or county recorder's office. Examples of public records which may be checked are: real estate, marriage, and divorce, uniform commercial code financing statements, voter registration, judgments, court or police records, state wage records, utility records and postal records.

## **15.5 PLACEMENT OF DOCUMENTS, EVIDENCE AND STATEMENTS OBTAINED BY THE FH**

Documents and other evidence obtained by the FH during the course of an investigation. will be considered "work product" and will be kept in a separate "work file." The work file will be kept locked. Such cases under review will not be discussed among the FH staff unless they are involved in the process, or have information, which may assist in the investigation.

FH will maintain a Fraud Data Base System (FDBS), which will document the status of the cases and additional information in order to provide a tracking devise for all fraud cases.

Access to the FDBS will be limited to the Executive Director, Director of Housing Management, and/or their designees.

In addition, the FH will track all repayment agreements resulting from an investigation to ensure families are staying current on their repayment agreements.

## **15.6 EVALUATION OF THE FINDINGS**

If it is determined that a program violation has occurred, the FH staff will review the facts to determine:

1. The type of violation (non-compliance, fraud).
2. Whether the violation was intentional or unintentional.
3. What amount of money (if any) is owed by the resident?
4. If the family is eligible for continued assistance.

### **Intentional Misrepresentations**

When a family falsifies, misstates, omits or otherwise misrepresents a material fact which results (or would have resulted) in an underpayment of rent by the family, an evaluation will determine whether or not:

- The family had knowledge that his/her actions were wrong, and
- That the family willfully violated a program requirement, a Family Obligation, or committed a serious violation of the lease.

### **Knowledge that the Action or Inaction Was Wrong**

This will be evaluated by determining if the family was made aware of program requirements and prohibitions. The family's signature on various certifications, briefing certificate, Personal Declaration Packets, forms HUD-52675 and "What You Should Know About EIV" are adequate to establish knowledge of wrongdoing.

### **The Family Willfully Violated the Law**

Any of the following circumstances will be considered adequate to demonstrate willful intent:

1. An admission by the family of the misrepresentation.
2. That the act was done repeatedly.
3. If a false name or Social Security Number was used.
4. If there were admissions to others of the illegal action or omission.
5. That the family omitted material facts, which were known to them (e.g., employment of self or other household member).
6. That the family falsified, forged or altered documents.
7. That the family conveyed and certified to statements during a rent (re)determination which were later independently verified to be false.

## **15.7 NOTIFICATION OF INVESTIGATION RESULTS**

The family will be notified by mail of the proposed action no later than ten (10) business days after the conclusion of the Family Conference advising the family that:

- No fraud or misrepresentation was found
- Fraud or misrepresentation was found, but no restitution is owed
- Fraud or misrepresentation was found, and restitution is due the FH

Where due process is required, the notice to the family will comply with the policy in the informal hearing/Grievance chapter of this policy giving the family 10 business days by which to request an appeal. If the family does not reply in this timeframe, the FH will proceed to issue the 30-day notice of termination.

## **PART II: CORRECTIVE MEASURES AND PENALTIES**

### **15.8 UNDER- OR OVERPAYMENT**

An under or overpayment includes an incorrect tenant rent payment by the family, or an incorrect utility reimbursement to a family.

#### **Corrections**

Whether the incorrect rental determination is an overpayment or underpayment, the FH must promptly correct the family's rent and any utility reimbursement prospectively.

Increases in the tenant rent will be implemented only after the family has received [a](#) 30-day notice.

Any decreases in tenant rent will become effective the first of the month following the discovery.

#### **Reimbursement**

Whether the family is required to reimburse the FH or the FH is required to reimburse the family depends upon which party is responsible for the incorrect payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

### **15.9 FAMILY-CAUSED ERRORS AND PROGRAM ABUSE**

General administrative requirements for participating in the program are discussed throughout the ACOP. This section deals specifically with errors and program abuse by family members.

An incorrect rent 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 the FH to use incorrect information provided by a third party.

#### **Family Reimbursement to FH**

In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. The FH may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the

amount owed, the FH will terminate the family's lease in accordance with the policies in Chapter 13.

### **FH Reimbursement to Family**

The FH will not reimburse the family for any overpayment of rent when the overpayment clearly is caused by the family.

### **Prohibited Actions**

An applicant or resident in the public housing program must not knowingly:

- Make a false statement to the FH [Title 18 U.S.C. Section 1001].
- Provide incomplete or false information to the FH [24 CFR 960.259(a)(4)].
- Commit fraud, or make false statements in connection with an application for assistance or with reexamination of income [24 CFR 966.4(l)(2)(iii)(C)].

Any of the following will be considered evidence of family program abuse:

- Offering bribes or illegal gratuities to the FH Board of Commissioners, employees, contractors, or other FH representatives
- Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to the FH 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., misreporting of income or 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
- The FH 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 the FH may, at its discretion, impose any of the following remedies.

- The FH may require the family to repay any amounts owed to the program (see 15.9, Family Reimbursement to FH).
- The FH 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 13 (for residents).
- The FH may deny admission or terminate the family's lease following the policies set forth in Chapter 3 and Chapter 13 respectively.
- The FH may refer the family for state or federal criminal prosecution as described in section 15.11.

## **15.10 FH-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of FH staff with respect to normal program administration are discussed throughout the ACOP. This section specifically addresses actions of a FH staff member that are considered errors or program abuse related to the public housing program. Additional standards of conduct may be provided in the FH personnel policy.

FH caused incorrect rental determinations include (1) failing to correctly apply public housing rules regarding family composition, income, assets, and expenses, and (2) errors in calculation.

### **Repayment to the FH**

The family is not required to repay an underpayment of rent if the error or program abuse is caused by FH staff.

### **FH Reimbursement to Family**

The FH will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error or staff program abuse.

### **Prohibited Activities**

Any of the following will be considered evidence of program abuse by FH staff:

- Failing to comply with any public housing program requirements for personal gain;
- Failing to comply with any public housing program requirements as a result of a conflict of interest relationship with any applicant or resident;
- Seeking or accepting anything of material value from applicants, residents, vendors, contractors, or other persons who provide services or materials to the FH;
- Disclosing confidential or proprietary information to outside parties;
- Gaining profit as a result of insider knowledge of FH activities, policies, or practices;
- Misappropriating or misusing public housing funds;
- Destroying, concealing, removing, or inappropriately using any records related to the public housing program;
- Committing any other corrupt or criminal act in connection with any federal housing program.

## **15.11 DISPOSITIONS OF CASES INVOLVING MISREPRESENTATIONS**

In all cases of misrepresentations involving efforts to recover monies owed, the FH may pursue, depending upon its evaluation of the criteria stated above, one or more of the following actions:

### **Civil Remedies:**

The FH may:

1. Terminate tenancy and demand payment of restitution in full.
2. Terminate tenancy. Resident may request payment arrangements to settle any outstanding debt.
3. Terminate assistance and/or pursue restitution through civil litigation.
4. Terminate assistance and seek recovery through garnishment of wages or other forms of collection.
5. Permit continued assistance at the correct level and execute an administrative repayment agreement in accordance with the FH's repayment policy.

### **Criminal Referral:**

If the FH believes that the case meets the criteria established by the FH for prosecution, the FH may refer the case to other enforcement agencies.

### **Termination by the FH**

In any event, and at the sole discretion of the FH, the FH may terminate a public housing tenancy for a material breach of the lease for discovery of material false statements or fraud, including but not limited to misrepresentation of facts, omitted pertinent information, or failure to inform Management of information it requires for an annual re-certification or interim adjustments, by the family or family member in connection with an application for assistance, with re-certification, or reexamination of income.

## **15.12 FRAUD AND PROGRAM ABUSE RECOVERIES**

If the FH enters into a repayment agreement with a family to collect rent owed, initiate litigation against the family to recover rent owed, or begin eviction proceedings against a family the FH may retain 100 percent of program funds that the FH recovers [Notice PIH 2007-27 (HA)].

If the FH does none of the above, all amounts that constitute an underpayment of rent must be returned to HUD.

The family must be afforded the opportunity for a hearing through the FH's grievance procedures.

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## CHAPTER 16- PROGRAM ADMINISTRATION

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### INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this ACOP. The policies are discussed in seven parts as described below:

**Part I: Setting Utility Allowances.** This part describes how utility allowances are established and revised. Also discussed are the requirements to establish surcharges for excess consumption of FH-furnished utilities.

**Part II: Establishing Flat Rents** This part describes the requirements and policies related to establishing and updating flat rent amounts.

**Part III: Repayment of Family Debts.** This part contains policies for recovery of monies that have been underpaid by families, and describes the circumstances under which t FH will offer repayment agreements to families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

**Part IV: Public Housing Assessment System (PHAS).** This part describes the PHAS indicators, how FH is scored under PHAS, and how those scores affect a FH.

**Part V: 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 FH will follow.

**Part VI: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level.** This part describes FH's reporting responsibilities related to children with environmental intervention blood lead levels that are living in public housing.

**Part VII: Notification to Applicants and Resident regarding Protections under the Violence against Women Reauthorization Act of 2013 (VAWA).** This part includes policies for notifying applicants and residents of VAWA requirements related to notifying families about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault, and stalking; and maintaining the confidentiality of information obtained from victims.

### PART I: SETTING UTILITY ALLOWANCES [24 CFR 965 Subpart E]

#### 16.0 OVERVIEW

FH must establish allowances for FH-furnished utilities for all check metered utilities and for resident-purchased utilities for all utilities purchased directly by residents from a utility supplier [24 CFR 965.502(a)].

FH must also establish surcharges for excess consumption of FH-furnished utilities [24 CFR 965.506].

FH must maintain a record that documents the basis on which utility allowances and

scheduled surcharges are established and revised, and the record must be made available for inspection by residents [24 CFR 965.502(b)].

## **16.1 UTILITY ALLOWANCES [24 CFR 965, SUBPART E]**

Utility allowances are provided to families paying income-based rents and/or families who elect to pay a flat rent for their unit size when the cost of utilities is not included in the rent. When determining a family's income-based or flat rent, FH must use the utility allowance applicable to the type of dwelling unit leased by the family.

### **Utility Allowance Revisions [24 CFR 965.507]**

FH reviews its schedule of utility allowances each year. Between annual reviews, FH will revise the utility allowance schedule if there is a rate change that by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which such allowances were based. Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective. Such rate changes shall not be subject to the 60 day notice requirement of Sec. 965.502 (c) [PH Occ GB, p. 171].

The resident rent calculations must reflect any changes in FH's utility allowance schedule [24 CFR 960.253(c)(3)].

Unless FH is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted.

### **Utility Reimbursement**

When the Utility Allowance exceeds the family's Total Tenant Payment, FH will provide a Utility Reimbursement Payment to the family each month. The check will be made out directly to the family.

### **Resident-Paid Utilities**

The following requirements apply to residents living in developments with resident-paid utilities or applicants being admitted to such developments:

Paying the utility bill is the resident's obligation under the lease. Failure to pay utilities is grounds for eviction.

## **16.2 SURCHARGES FOR PHA-FURNISHED UTILITIES [24 CFR 965.506]**

Residents in units where FH pays the utilities may be charged for excess utilities if additional appliances or equipment are used in the unit. This charge shall be applied as specified in the lease. [24 CFR 966.4 (b)(2)]

## **16.3 NOTICE REQUIREMENTS [965.502]**

FH must give notice to all residents of proposed allowances and scheduled surcharges, and revisions thereof. The notice must be given in the manner provided in the lease and

must:

- Be provided at least 60 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.
- Describe the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances and schedule of surcharges.
- Notify residents of the place where FH's documentation of which proposed allowances and surcharges are based is available for inspection.
- Provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances, scheduled surcharges, or revisions. Such written comments shall be retained by FH and shall be available for inspection by residents.
- FH's determination of allowances, scheduled surcharges, and revisions thereof shall be final and valid unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

#### **16.4 INDIVIDUAL RELIEF OF UTILITY ALLOWANCE [24 CFR 965.508]**

Resident may request for relief from payment of utility supplier billings in excess of the Utility Allowance for resident-paid utilities. Management may grant such requests on reasonable grounds such as the special needs of elderly, ill, or disabled residents, or special factors affecting utility usage that are not within Resident's control, as further described in the Schedule of Utility Charges. These Utility Allowance relief requests must be made to the designated Management staff of the development where Resident resides.

### **PART II: ESTABLISHING FLAT**

#### **16.5 OVERVIEW**

Flat rents are designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

Flat rents are also used to prorate assistance for a mixed family. A mixed family means a family whose members include those with citizenship or eligibility immigration status, and those without citizenship or eligible immigration status. [24 CFR 5.504].

This part discusses how FH establishes and updates flat rents. Policies related to the use of flat rents, family choice of rent, flat rent hardships, and proration of rent for a mixed family are discussed in Chapter 6.

#### **16.6 FLAT RENTS [24 CFR 960.253(B) AND NOTICE PIH 2017-23]**

The 2015 Appropriations Act requires that flat rents must be set at no less than 80 percent of the applicable fair market rent (FMR). Alternatively, FH may set flat rents at no less than

80 percent of the applicable small area FMR(SAFMR) for metropolitan areas, or 80 percent of the applicable unadjusted rents for nonmetropolitan areas.

For areas where HUD has not determined a SAFMR or an unadjusted rent, FHs must set flat rents at no less than 80 percent of the FMR or apply for an exception flat rent.

The 2015 Appropriations Act permits FH to request an exception flat rent that is lower than either 80 percent of the FMR or SAFMR/unadjusted rent if FH can demonstrate that these FMRs do not reflect the market value of a particular property or unit.

In order to demonstrate the need for an exception flat rent, FH is required to submit a market analysis methodology that demonstrates the value of the unit. The PHA must use HUD's rent reasonableness methodology to determine flat rents. In determining flat rents, PHAs must consider the following:

- a. Location
- b. Quality
- c. Unit size
- d. Unit type
- e. Age of property
- f. Amenities at the property and in immediate neighborhood
- g. Housing services provided
- h. Maintenance provided by FH
- i. Utilities provided by FH

FH must provide a corresponding key explaining the calculations used for determining the valuation for each factor. HUD published a Flat Rent Market Analysis tool on August 22, 2018, which includes a rent adjustment guide, a market rent comparison guide, and a rent adjustment worksheet to aide FH in requesting exception flat rents.

FH must receive written HUD approval before implementing exception flat rents. PHAs that use exception flat rents must conduct a new market analysis, and obtain HUD approval, annually. [PIH 2017-23]

FH is required to apply a utility allowance to flat rents as necessary. Flat rents set at 80 percent of the FMR must be reduced by the amount of the unit's utility allowance, if any.

#### **Review of Flat Rents [24 CFR 960.253(b)]**

FH will review flat rents on an annual basis. If the FMR unadjusted rent is lower than the previous year, FH will adjust flat rents to no lower than 80 percent of the current FMR.

#### **Posting of Flat Rents**

FH will publicly post the schedule of flat rents in a conspicuous manner at FH central office and at each site office.

#### **Documentation of Flat Rents [24 CFR 960.253(b)(5)]**

FH will maintain records that document the method used to determine flat rents, and that show how flat rents were determined by the FH in accordance with this method.

## **PART III: FAMILY DEBTS TO THE FH [24 CFR 982.552(PIH 2017-12)]**

### **16.7 OVERVIEW**

This section describes FH's policies and guidelines for the recovery of monies that have been underpaid by families and the use of repayment agreements. Before a debt is assessed against a family, the file must contain documentation to support FH's claim that the debt is owed. The file must further contain written documentation of the method of calculation, in a clear format for review by the family, as appropriate.

When families owe money to FH, every effort will be made to collect the debt. A variety of collection tools to recover debts may be used including, but not limited to:

- Requests for lump sum payments
- Repayment agreements
- Abatements
- Deductions
- Collection agencies
- Civil suits and/or Small Claims Court
- Franchise Tax Board (FTB) for interagency intercept collections
- Credit bureaus
- Submitting the resident's name to HUD's EIV database – Debts Owed to PHAs

### **16.8 REPAYMENT POLICY**

Any amount due to FH by a public housing family must be repaid. If the family is unable to repay the debt within 30 days, FH will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, FH will terminate the family's tenancy in accordance with the policies in Chapter 13 and Resident Lease Agreement. FH will also pursue other modes of collection.

A Repayment Agreement is a document entered into between FH and the resident who owes a debt to FH. The Repayment Agreement contains an acknowledgment by the person of the debt in a specific amount, the terms of repayment, any special provisions of the agreement, and the remedies available to FH upon default of the agreement.

#### **Down Payment Requirement**

The Repayment Agreement will require that the family pay 25% of the retroactive amount due and the remaining balance to be paid in equal payments over a period of time not to

exceed 12 months for amounts under \$2400 or 24 months for any amount in excess of \$2400.

### **Payment Thresholds**

The maximum amount for which FH will enter into a payment agreement with a family is \$10,000.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, FH will terminate the family's tenancy in accordance with the policies in Chapter 13 and Resident Lease Agreement. FH will also pursue other modes of collection.

### **Late Payments**

A payment will be considered to be in arrears if: The payment has not been received by the close of the business day on which the payment was due. If the due date is on a weekend or holiday, the due date will be at the close of the next business day.

If the family's repayment agreement is in arrears, FH may do one or more of the following:

- Require the family to pay the entire amount that has not been paid timely plus the current month's payment in order to avoid termination of tenancy, or
- Require the family to pay the balance in full in order to avoid termination of tenancy, or
- Pursue civil collection of the balance due, or
- Terminate the tenancy.

If the payment is not received by the due date, it will be considered a breach of the agreement and FH will terminate tenancy in accordance with the policies in Chapter 13.

### **Execution of the Agreement**

Repayment Agreements will be executed signed and dated between FH and the head of household or other adult family member.

### **Due Dates**

All payments are due by the close of business on the 1<sup>st</sup> day of the month. If the 1<sup>st</sup> does not fall on a business day, the due date is the close of business on the first business day after the 1<sup>st</sup>.

### **No Offer of Repayment Agreement**

FH may not agree to a repayment agreement if the family already has a Repayment Agreement in place, or if the family has breached previous Repayment Agreements.

FH, at its sole discretion, will determine on a case-by-case basis whether or not to offer a family a repayment agreement for monies owed to FH. All Repayment Agreements must be approved by the District Manager.

FH may approve in writing a decrease in the monthly payments, either temporary or

permanent, in cases of extreme circumstances after receiving from the family a written request for a decrease and verification of hardship.

#### **Additional Debt Incurred**

If the family has a Repayment Agreement in place and incurs an additional debt to FH:

- FH may choose, at its discretion, to agree to more than one Repayment Agreement at a time with the same family.
- If a Repayment Agreement is in arrears more than 30 days, any new debts must be paid in full.

Repayment of Debt for Move Outs will be included in the move out statement.

### **16.9 FAMILY DEBTS DUE TO FRAUD/NON-REPORTING OF INFORMATION**

HUD's definition of program fraud and abuse is a single act or pattern of actions that constitutes a false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead FH.

#### **Immediate Payment of Retroactive Rent where Debt is the Result of Resident Misrepresentation of Failure to Disclose Material Information**

If the Resident submits false information on any application, Personal Declaration, certification documents or request for interim adjustment or does not report interim changes in family income or other factors as required by his/her Resident Lease Agreement, and as a result, is charged a rent less than the amount required by HUD's rent formulas, the Resident agrees to reimburse FH for the difference between the rent he/she should have paid and the rent he/she was charged. FH, in its sole discretion, may terminate the Rental Lease Agreement for a material breach and/or may make the rent increase retroactive to the date the income increased. If FH determines that a Resident is liable for the payment of Retroactive Rent, the resulting retroactive rent amount shall be paid immediately by the Resident.

A decision by FH to accept the payment of Retroactive Rent from a Resident shall not constitute a waiver of its right to either terminate the Rental Lease Agreement or otherwise pursue any additional actions allowable under Federal, State or Local Law.

#### **Payment of Retroactive Rent Where Debt is Not the Result of Resident Misrepresentation of Failure to Disclose Material Information**

FH, in its sole discretion, may enter into a Repayment Agreement for debt to the FH that did not result from the Resident's submission of false information on any application, Person Declaration, certification documents or request for interim adjustment or from a failure to report interim changes in family income or other factors as required by his/her Rental Lease Agreement. (Example, employer supplied inaccurate earnings).

The monthly retroactive payment plus the amount of rent the resident pays at the time of the repayment agreements executed should be affordable and not to exceed 40 percent of the family's monthly adjusted income. However, PHAs have the discretion to establish thresholds and policies for repayment in addition to HUD required procedures. (Section 16 PIH Notice 2018-18).

#### **16.10 REPAYMENT AGREEMENTS AT CONCLUSION OF TENANCY OR RESOLUTION OF EVICTION PROCEEDINGS**

FH may enter into a repayment agreement in resolution of a debt incurred by a Resident during the course of his or her tenancy where the Resident has indicated his or her intent to voluntarily vacate. FH may also enter into a repayment agreement in resolution of either a notice to terminate or not renew a tenancy. The terms of such agreements shall be determined at the discretion of the FH. The resident's name will be submitted to HUD's EIV database –Debts Owed to PHAs no later than 60 days of End of Participation in accordance with HUD's EIV policy.

#### **16.11 FAMILY DEBTS PAID IN FULL**

If FH determines not to enter into a repayment agreement, or if the repayment agreement is breached, and FH demands payment of the balance in full. The family must pay the full amount due and owing in one lump sum. If the family fails to pay, the FH may pursue collection through a collection agency or a civil action and may notify credit agencies of the debt. Whether or not the amount is paid, FH does not waive its right to take other action including termination of tenancy or referral for criminal prosecution in appropriate cases.

#### **16.12 PROGRAM FRAUD**

If a family owes an amount, which equals or exceeds \$10,000, as a result of program fraud, the case will be referred to the Inspector General. Where appropriate, FH will refer the case for criminal prosecution.

#### **16.13 TRANSFER REQUEST WHILE UNDER A REPAYMENT AGREEMENT**

If the family requests a move to another unit and has a repayment agreement in place and the repayment agreement is not in arrears, the family may be required to pay the balance in full prior to moving to the new unit.

If the family requests a move to another unit and is in arrears on a repayment agreement, unless they pay the balance in full, the request will be denied.

Under special circumstances, FH may make an exception and allow a family to move without paying the entire balance of the debt if the family is current with its payments. FH may also allow a family who is in arrears to become current in order to process a move if the move is for one of the following reasons:

- A natural disaster.
- The unit is uninhabitable or has major UPCS deficiencies that are not the result of a family action or inaction.

- A life-threatening situation, such as the family is a witness to or a victim of a crime and must move for safety reasons. The family will be required to provide proof in such cases.
- VAWA emergency transfer requests.

## **PART IV: PUBLIC HOUSING ASSESSMENT SYSTEM (PHAS)**

### **16.14 OVERVIEW**

The purpose of the Public Housing Assessment System (PHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among FHs, public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations.

### **16.15 PHAS INDICATORS [24 CFR 902 SUBPARTS A, B, C, D, AND E]**

The table below lists each of the PHAS indicators, the points possible under each indicator, and a brief description of each indicator. FH's performance is based on a combination of all four indicators.

<p><b>Indicator 1: Physical condition of the PHA's properties</b>  <b>Maximum Score: 40</b></p> <ul style="list-style-type: none"> <li>• The objective of this indicator is to determine the level to which a PHA is maintaining its public housing in accordance with the standard of decent, safe, sanitary, and in good repair.</li> <li>• To determine the physical condition of a PHA's properties, inspections are performed of the following five major areas of public housing: site, building exterior, building systems, dwelling units, and common areas. The inspections are performed by an independent inspector arranged by HUD, and include a statistically valid sample of the units in the PHA's public housing portfolio.</li> </ul>
<p><b>Indicator 2: Financial condition of a PHA</b>  <b>Maximum Score: 25</b></p> <ul style="list-style-type: none"> <li>• The objective of this indicator is to measure the financial condition of a PHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary, and in good repair.</li> <li>• A PHA's financial condition is determined by measuring the PHA's entity-wide performance in each of the following components: quick ratio, months expendable net assets ratio, and debt service coverage ratio.</li> </ul>
<p><b>Indicator 3: Management operations of a PHA</b>  <b>Maximum Score: 25</b></p> <ul style="list-style-type: none"> <li>• The objective of this indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's</li> </ul>

<p>management operations capabilities.</p> <ul style="list-style-type: none"> <li>• Each project's management operations are assessed based on the following sub indicators: occupancy, tenant accounts receivable, and accounts payable.</li> <li>• An on-site management review may be conducted as a diagnostic and feedback tool for problem performance areas, and for compliance. Management reviews are not scored.</li> </ul>
<p><b>Indicator 4: Capital Fund</b>  <b>Maximum Score: 10</b></p> <ul style="list-style-type: none"> <li>• The objective of this indicator is to measure how long it takes the PHA to obligate capital funds and to occupy units.</li> <li>• The PHA's score for this indicator is measured at the PHA level and is based on the following sub indicators: timeliness of fund obligation and occupancy rate.</li> </ul>

#### 16.16 PHAS SCORING [24 CFR 902 Subpart F]

HUD's Real Estate Assessment Center (REAC) issues overall PHAS scores, which are based on the scores of the four PHAS indicators, and the sub indicators under each indicator. The PHA's indicator scores are based on a weighted average of the PHA's public housing projects' scores. PHAS scores translate into a designation for each PHA as high performer, standard performer, substandard performer, or troubled performer.

A high performer is a PHA that achieves an overall PHAS score of 90 or greater, and achieves a score of at least 60 percent of the points available under the physical, financial, and management indicators and at least 50 percent of the points available under the capital fund indicator.

A standard performer is a PHA that has an overall PHAS score between 60 and 89, and achieves a score of at least 60 percent of the points available under the physical, financial, and management indicators and at least 50 percent of the points available under the capital fund indicator.

A substandard performer is a PHA that has an overall PHAS score of at least 60 percent and achieves a score of less than 60 percent under one or more of the physical, financial, or management indicators.

A troubled performer is a PHA that achieves an overall PHAS score of less than 60, or achieves less than 50 percent of the total points available under the capital fund indicator.

These designations can affect a PHA in several ways:

- High-performing PHAs are eligible for incentives including relief from specific HUD requirements and bonus points in funding competitions [24 CFR 902.71].
- PHAs that are standard performers may be required to submit and operate under a corrective action plan to eliminate deficiencies in the PHA's performance [24 CFR 902.73(a)(1)].
- PHAs that are substandard performers will be required to submit and operate under a corrective action plan to eliminate deficiencies in the PHA's performance [24 CFR 902.73(a)(2)].

- PHAs with an overall rating of “troubled” are subject to additional HUD oversight, and are required to enter into a memorandum of agreement (MOA) with HUD to improve PHA performance [24 CFR 902.75].
- PHAs that fail to execute or meet MOA requirements may be referred to the Assistant Secretary to determine remedial actions, including, but not limited to, remedies available for substantial default [24 CFR 902.75(g) and 24 CFR Part 907].

PHAs must post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and designation [24 CFR 902.64(b)(2)].

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## **PART V: RECORD KEEPING**

### **16.17 OVERVIEW**

FH 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, FH must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights, and that comply with VAWA 2013 confidentiality requirements.

### **16.18 RECORD RETENTION (PIH 2014-20)**

During the term of each public housing tenancy FH will retain the last three (3) years of the Form HUD-50058 and supporting documentation related to the family's eligibility, tenancy, and termination, including, but limited to:

- Original Application; income documentation; screening documentation; criminal background check approval form, and original lease processed at time of admission;
- Certification for the past three years, includes criminal background check approval form for a new adult members added to the household;
- Family's signed Declaration of not being assigned a SSN by the SSA;
- Earned Income Disallowance documentation to determine family has exhausted the 48-month lifetime maximum eligibility period or 24-month lifetime maximum eligibility period.

**FH will retain the above records for a period of at least three years from the end of participation (EOP) date [24 CFR 908.101].**

In addition, FH will keep the following records for at least four years:

- An application from each ineligible family and notice that the applicant is not eligible
- Lead-based paint records as required by 24 CFR 35, Subpart B
- Documentation supporting the establishment of flat rents and the public housing maximum rent
- Documentation supporting the establishment of utility allowances and surcharges
- Documentation supporting PHAS scores
- Accounts and other records supporting FH budget and financial statements for the program
- Complaints, investigations, notices, and corrective actions related to violations of Fair Housing Act or the equal access final rule

- Other records as determined by the FH or as required by HUD
- If a hearing to establish a family's citizenship status is held, retention of records is five years.

## **16.19 RECORDS MANAGEMENT**

All applicant and participant information will be kept in a secure location and access will be limited to authorized FH staff.

FH 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 the FH may release the information collected.

### **Upfront Income Verification (UIV) Records**

Prior to utilizing HUD's EIV system, FH will adopt and implement EIV security procedures required by HUD.

### **Criminal Records**

FH may only disclose the criminal conviction records which FH receives from a law enforcement agency to officers or employees of FH, or to authorized representatives of FH who have a job-related need to have access to the information [24 CFR 5.903(e)].

FH must establish and implement a system of records management that ensures that any criminal record received by FH 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 FH action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

FH must establish and implement a system of records management that ensures that any sex offender registration information received by FH 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 FH 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 FH other than under 24 CFR 5.905.

### **Medical/Disability Records**

FH is not permitted to inquire about the nature or extent of a person's disability. FH may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If FH receives a verification document that provides such information, the FH should not place this information in the resident file. FH should destroy the document.

### **Domestic Violence, Dating Violence, Sexual Assault or Stalking Records-**

FH's obligation to keep confidential any information that it receives from a victim unless

- (a) FH has the victim's written permission to release the information,
- (b) it needs to use the information in an eviction proceeding, or
- (c) it is compelled by law to release the information.

All information obtained regarding the above will be maintained in a separate file.

## **PART VI: REPORTING REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

### **16.20 REPORTING REQUIREMENTS [24 CFR 35.1130(e); Notice PIH 2017-13]**

FH 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.

FH will provide written notice of each known case of a child with an environmental intervention blood level to the HUD field office within (five) 5 business days of receiving the information.

## **PART VII: NOTIFICATION TO APPLICANTS AND TENANTS REGARDING PROTECTIONS UNDER THE VIOLENCE AGAINST WOMEN ACT OF 2013 (VAWA)**

### **16.21 OVERVIEW**

The Violence against Women Reauthorization Act of 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault, and stalking who are applying for or receiving assistance under the public housing program. If your state or local laws provide greater protection for such victims, those apply in conjunction with VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and FH policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and FH policies are located in Chapter 3, "Eligibility"; Chapter 5, "Occupancy Standards and Unit Offers"; Chapter 8, "Leasing and Inspections" Chapter 12, "Transfer Policy"; and Chapter 13, "Lease Terminations".

The Violence Against Women Reauthorization Act of 2013 (VAWA) requires FH to inform public housing residents of their rights under this law, including their right to confidentiality and the limits thereof. Since VAWA provides protections for applicants as well as residents, FH will provide the same information to applicants [24 CFR 5.2007(3)].

This part describes the steps that the FH will take to ensure that all actual and potential

beneficiaries of its public housing program are notified about their rights under VAWA.

## **16.22 VAWA NOTIFICATION**

FH adopts the following policy to help ensure that all actual and potential beneficiaries of its public housing program are aware of their rights under VAWA. FH will post the following information regarding VAWA in its offices and on its Web site. It will also make the information readily available to anyone who requests it.

- A notice of occupancy rights under VAWA to public housing program applicants and residents who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (VAWA Form HUD-5380, see Exhibit 16-1)
- A copy of VAWA Form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (see Exhibit 16-2)
- A copy of the FH's emergency transfer plan (VAWA Form HUD-5381) (Exhibit 16-3)
- A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, (VAWA Form HUD-5383) (Exhibit 16-4)
- A copy of FH's VAWA policy, (Exhibit 16-5)
- The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibit 16-1)
- Contact information for local victim advocacy groups or service providers.

## **16.23 NOTIFICATION TO APPLICANTS**

FH will provide denied-applicants with notification of their protections and rights under VAWA along with the VAWA self-certification form (VAWA form HUD-5382).

The notice will explain the protections afforded under the law, inform each applicant of FH confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

The VAWA information provided to applicants will consist of the notices in Exhibit 16-1 and 16-2.

## **16.24 NOTIFICATION TO RESIDENTS [24 CFR 5.2007(3)]**

FH will provide all residents with notification of their protections and rights under VAWA at the time of admission, at denial of assistance, at lease termination and eviction.

The notice will explain the protections afforded under the law, inform the resident of FH's confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

Whenever FH has reason to suspect that providing information about VAWA to a public housing resident might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim.

## 16.25 DEFINITIONS [24 CFR 5.2003, FR NOTICE 11/16/16]

As used in VAWA:

- The term **actual and imminent threat** means, to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.
- The term **affiliated individual** means, with respect to an individual:
  - A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the position or place of a parent; or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
  - Any individual, tenant or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- The term **bifurcate** means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law, subject to permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain resident (s) or lawful occupants can be evicted or removed while the remaining resident (s), family member (s), or lawful occupant (s) can be evicted or removed and the remaining resident (s) or lawful occupant (s) can continue to reside in the unit under the same lease requirements or may be revised depending on the eligibility for continued occupancy of the remaining resident (s) and lawful occupant (s).
- The term **dating violence** means violence committed by a person
  - 1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - 2) where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - The length of the relationship
    - The type of relationship
    - The frequency of interaction between the persons involved in the relationship
- The term **domestic violence** includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth

victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

- The term “***spouse or intimate partner of the victim***” includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of integration between the persons involved in the relationship.
- The term *sexual assault* means:
  - Any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks the capacity to consent
- The term *stalking* means:
  - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

#### **16.26 DOCUMENTATION [24 CFR 5.2007]**

FH presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, or stalking, or criminal activity related to any of these forms of abuse may, but is not required to, request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. FH may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy FH's request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

1. A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim
2. A federal, state, tribal, territorial, or local police report or court record, or an administrative record
3. Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a mental health professional; or a medical professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

FH may require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under “Conflicting Documentation,”

Any request for documentation of domestic violence, dating violence, sexual assault, or stalking will be in writing, will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to

submit the documentation or request an extension in writing by the deadline. FH may, in its discretion, extend the deadline for 10 business days. Any extension granted by the FH will be in writing.

#### **Conflicting Documentation [24 CFR 5.2007]**

In cases where FH receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, FH may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). FH must honor any court orders issued to protect the victim or to address the distribution of property.

If FH is presented with conflicting certification documents (two or more forms HUD-5382) from members of the same household, FH will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(e) and by following any HUD guidance on how such determinations should be made.

#### **Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]**

FH has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b).

If FH accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, sexual assault, or stalking, FH will document acceptance of the statement or evidence in the individual's file.

#### **Failure to Provide Documentation [24 CFR 5.2007]**

In order to deny relief for protection under VAWA, FH must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as FH may allow, FH may deny relief for protection under VAWA.

### **16.27 CONFIDENTIALITY [24 CFR 5.2007(B)(4)]**

All information provided to FH regarding domestic violence, dating violence, sexual assault, or stalking, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, must be retained in confidence. This means that FH (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, FH will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

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# CHAPTER 17 – MIXED FINANCE DEVELOPMENTS

[24 CFR Part 941 Subpart F]

## INTRODUCTION

This chapter will provide guidance related to FH's mixed finance developments. FH will ensure that these units operate in accordance with federal requirements, including those in the Annual Contributions Contract (ACC) and the Mixed Finance ACC Amendment; governing regulations for the public housing program and its own policies contained in this ACOP; including requirements and policies as established by the Low Income Housing Tax Credit (LIHTC) program as governed by Section 42 of the Internal Revenue Code (IRC) federal tax code, and HUD guidelines (HUD Handbook 4350.3 Change 4) for tax credit units and per the respective properties management plan.

## PART I: PUBLIC HOUSING

### 17.0 PUBLIC HOUSING UNITS

All public housing units in a mixed finance property shall follow all policies as set forth in this ACOP.

### 17.1 ELIGIBILITY/INCOME LIMITS

Households must be eligible for whichever program(s) applies to their unit and follow the income limits according to the program(s). An applicant must qualify for the program, which sets the lowest income limit for the unit.

### 17.2 SITE-BASED INTEREST LIST

All mixed finance developments will maintain an interest list. To establish an interest list, pre-applications will be accepted from any family wishing to apply at any specific Mixed Development. FH/Agent may select one or more of the following methods for pre-application:

- Submitted online via FH website or property specific website.
- By mail
- Submitted in person
- Over the phone
- By other methods as described in the public announcement.

• By other methods as described in the public announcement.

At the time the FH/Agent announces its intent to open the interest list, the actual methods of accepted pre-applications will be clearly stated in the public announcement and similar outreach methods.

If an applicant is disabled and requires special accommodation in submitting a pre-application, and the disability is obvious, the FH will accommodate the request without verifying the disability. Specific instructions for making a reasonable accommodation

request will be included in the public notice and other pre-application outreach materials.

The methods listed above will be the same as listed in Section 4.0 of this ACOP.

### **17.3 HOUSING CHOICE VOUCHERS**

Applicants with a Housing Choice Voucher/Tenant Based Voucher (TBV) may not occupy a public housing unit. (24 CFR Part 982 Subpart H). Some mixed finance properties accept the TBV for the tax credit (Section 42) units only.

### **17.4 TRANSFERS**

Residents in a fixed public housing unit may transfer to a new unit and retain their status as a public housing resident only if the new unit is designated as public housing. If the public housing unit floats, then the residents may transfer and will retain their public housing status. Transfers will be made within the mixed finance development in accordance with the IRS Form 8609.

All transfers will be in accordance with Chapter 12, Transfer Policy of this plan.

### **17.5 RENTS**

Public housing units generating tax credits may collect more revenue than the maximum allowable tax credit rent as long as resident portion does not exceed this maximum amount and as long as the resident is receiving at least \$1.00 of subsidy; however, if the unit is a tax credit/public housing unit and the resident chooses the public housing established flat rent, the flat rent may not exceed the maximum allowable tax credit rent because there is no subsidy received.

### **17.6 GRIEVANCE PROCEDURES**

Public housing residents in a Mixed Finance Development have the right to grievance procedures. See section 3.342 of the ACOP

## **PART II - LOW INCOME HOUSING TAX CREDIT (LIHTC) UNITS**

All LIHTC units shall follow all requirements and policies as established by Section 42 of the federal tax code and HUD guidelines (HUD Handbook 4350.3 REV01).

### **17.7 ELIGIBILITY/INCOME LIMITS**

Households must be eligible for whichever program(s) applies to their unit and follow the income limits according to the program(s). An applicant must qualify for the program which sets the lowest income limit for the unit. When a public housing/tax credit resident loses status as a tax credit resident, tenancy will continue to be governed by the requirements of the public housing program.

## **17.8 MINIMUM INCOME**

Households must meet the established minimum income policies for the development.

## **17.9 FULL TIME STUDENTS**

Generally, households comprised entirely of full-time students are not eligible for the program. Program rules provide one or more of the exceptions required. The lease will state that if at future recertification all family members are full time students and the family does not qualify for an exception, the household will be ineligible and will have to vacate the tax credit unit.

## **17.10 FAMILY SIZE AND THE INCOME LIMIT**

Unborn children are included as household members when determining family size for comparison of annual income to the income limits.

## **17.11 VERIFICATION OF ASSETS**

IRS Revenue Procedures 94-65 states that if the total cash value of the family assets does not exceed \$5,000, the family could self-certify the existence, value of, and income earned from their assets. No further verification is necessary.

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## CHAPTER 18 - BANNING POLICY

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### INTRODUCTION

The following is the policy governing the implementation, administration, and enforcement of the FH banning regulation.

#### 18.0 DUTIES AND RESPONSIBILITIES

At the discretion of the District Manager or Area Manager property management staff shall have the primary responsibility for the implementation, administration and enforcement of the Banning Regulation as it pertains to their respective assigned housing development and scattered sites. Area Manager, and/or designated property management staff shall be responsible for notifying residents of persons banned from FH property.

Security personnel and law enforcement personnel contracted to provide services at the various housing developments shall participate in the enforcement of the Banning Regulation. Such enforcement may include properly identifying trespassers, issuing citations, and notifying the respective property management staff of such violation.

Site staff shall, upon approval by the Director of the Housing Management Division, and at the discretion of the designated District Manager or Area Manager, be responsible for identifying Banning violators, documenting violations by both residents and non-residents, and notifying the appropriate designated property management supervisors of such violations.

#### 18.1 BANNING REGULATION

A non-resident, including, but not limited to, a guest or visitor of a resident, may be banned for twelve (12) consecutive months if they commit the following act(s) in or upon any area of the FH development within a twelve (12) month period.

- Any misdemeanor or infraction that disturbs the peaceful enjoyment of the development, including, without limitation, illegal drug activity or violent criminal activity;
- Destruction of either FH property or private property;
- interfere with the job responsibilities of a FH employee or vendor; and/or
- After warning, continuing to disturb other residents' peaceful enjoyment of the complex.
- Has been previously evicted from the premises or any other FH properties.

The non-resident may be banned if they commit one misdemeanor or infraction involving possession of a controlled substance or one felony under state or federal law in or upon any area of the FH development including without limitation, illegal drug activity or violent criminal activity.

The FH development includes, but is not limited to, a private road or curb area, sidewalk, parking lot, alley, park grounds, playground, basketball court, hallway, stairway, laundry or recreational room, community center, or other common area grounds, place, building or vacant lot on FH property.

If a non-resident violates paragraph 1 above, he or she can be served with a banning notice excluding the non-resident from the FH development for twelve (12) consecutive months. At the time the non-resident is served, he or she will be requested to sign a form acknowledging receipt of the banning notice. A proof of service form indicating service of the banning notice on the non-resident shall be completed. A form documenting the incidents leading to the service of the banning notice shall also be completed.

Residents known to associate with the banned non-resident shall receive notice of the person banned from FH property in the form of a letter from FH. The letter will also state that pursuant to the Resident Lease Agreement, the resident, or member of the resident's household, shall not allow the person who has been excluded to be a guest of the resident in the FH development.

A list of banned non-residents will be distributed to FH management and staff, security personnel and law enforcement, as appropriate.

If a banned non-resident comes on the FH development, he or she may be cited for trespassing.

If the banned non-resident comes on the FH development with a resident who has received notice of the person's banned status, the resident will receive a lease violation. If the resident has not received notice, the resident will be provided notice and warned about future activities with the banned non-resident.

## **18.2 BREACH OF THE LEASE**

One violation of the Banning Regulation by any household member of a unit shall constitute a minor breach of the Resident Lease Agreement. Two or more violations of the Banning Regulation within a 12-month period by any household member (in any combination) may depending upon the seriousness of the violation (to be determined by FH Management) constitute a material breach of the Resident Lease Agreement, and shall be sufficient grounds for termination of the Lease Agreement.

## **18.3 NOTICES AND RECOMMENDATIONS**

Once a resident is notified, in writing, of a non-resident being banned from FH's property, the resident is deemed to have been put on notice that pursuant to their Lease Agreement they are prohibited from allowing a person who has been banned from FH property to be a guest and/or visitor of the resident at the housing development. If a resident is observed associating with a banned non-resident on the housing development, he or she will be cited for a lease violation.

First Violation: Written notice shall be served on all adult household members, by FH, advising of the lease violation. The notice shall constitute a WARNING to the household that subsequent violations may result in termination of the Resident Lease Agreement.

Second Violation: Written notice of a second lease violation shall be served on all adult household members and shall provide an opportunity for counseling for the head of household and household members. The Property Manager shall schedule an appointment for said counseling within ten (10) business days of the second violation notice.

Third Violation:—A Thirty-Day Notice to Terminate Tenancy will be served on all adult household members if more than two violations are issued within a twelve (12) month period.

#### **18.4 ENFORCEMENT**

Area Managers and/or designated property management staff shall have the authority to serve lease violations for non-compliance of the Banning Regulation.

#### **18.5 GRIEVANCE PROCEDURE**

FH residents shall have the right to file a grievance in response to actions taken by FH concerning issuance of a Banning Notice or violations of the Banning Regulation.

The FH Grievance Procedure is subject to the Code of Federal Regulations, Title 24, Part 966, revised as of April 1, 1985, and as further amended. Residents shall follow the grievance procedures as set forth in Chapter 14 of this policy.

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## **CHAPTER 19 – QUIET HOURS AND COMMON AREAS POLICY**

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### **INTRODUCTION**

The following is the policy governing the implementation, administration, and enforcement of the FH Quiet Hours and Common Areas Policy.

### **19.0 DUTIES AND RESPONSIBILITIES**

At the discretion of the Senior Manager of Property Management or District Managers,, the Area Manager and designated property management staff shall have the primary responsibility for implementation, administration and enforcement of the Quiet Hours and Common Areas Policy as it pertains to their respective assigned housing developments and scattered sites.

Security personnel and law enforcement personnel contracted to provide services at the various housing developments shall participate in the enforcement of the Quiet Hours and Common Areas Policy. Such enforcement may include properly identifying quiet hours and common area violators, and notifying the appropriate property management staff of such violations.

### **19.1 QUIET HOURS**

No resident, household member or invitee who is on the premises shall make, cause, or permit to be made or caused any sound or noise resulting in discomfort or annoyance to any reasonable person of normal sensitivity residing or working in the housing complex between the hours of 10:00 p.m. on any day and 6:00 a.m. of the following day. Additionally, no person shall loiter in the housing complex common areas in such a way as to interfere with the free use and enjoyment, passage or convenience of a RESIDENT or their invitee.

“Remain” means to stay behind, to tarry and to stay unnecessarily in or upon FH common area, including the congregating of groups of persons, in whom someone involved is not on or upon FH common area for the purpose of mere passage or going home.

A resident or other person having the legal care, custody or control of any household member, guest, or invitee shall not knowingly permit or by ineffective control allow the household member or guest or invitee to violate the quiet hours and common areas regulation. The term “knowingly” includes knowledge that resident or household member should reasonably be expected to have concerning the whereabouts of other household member, guests, or invitee. This requirement is intended to hold a neglectful or careless resident up to a reasonable community standard of responsibility.

It shall be no defense that a resident was indifferent to the activities or conduct or whereabouts of such guest(s), visitor(s), or other household member.

### **19.2 BREACH OF THE LEASE**

Two violation of the Quiet Hours and Common Areas policy by any household member, guest, visitor, or invitee of a unit shall constitute a minor breach of the Resident Lease

Agreement. Three or more violations of the Quiet Hours and Common Areas policy within a 12-month period of time by any household member (in any combination) shall constitute a material breach of the Resident Lease Agreement, and shall be sufficient grounds for termination of the Resident Lease Agreement.

### **19.3 NOTICES AND RECOMMENDATIONS**

#### **Notice**

All lease signers shall receive a copy of any citations for violation of the lease or addenda:

First Violation: Written notice shall be served on all lease signers, by FH management, advising of violation and that Head of Household is responsible for the household member(s), visitor(s), or guest(s)' or invitees' conduct. The notice shall constitute a WARNING to the Household that subsequent violations may result in termination of the Resident Lease Agreement.

Second Violation: Written notice of a second violation shall be served on all lease signers and shall provide an opportunity for counseling. The Property Manager should schedule the appointment for said counseling within ten (10) business days of the second violation notice.

Third Violation: Written notice of third violation shall be served on all lease signers and the appropriate remedy shall be enforced as set forth below.

### **19.4 REMEDIES**

#### **Review of Resident File**

When a household member or members, guest(s), visitor(s), or invitee have been cited three times within a 12-month period for violating the Quiet Hours and Common Areas policy, the property management staff shall conduct a review of the resident's historical file to determine the overall resident record. Based on such review, one of the following actions shall be taken:

Recommendation for Referral: The designated property management staff shall offer a referral to counseling, if available, to a family in lieu of an eviction notice. Such option is available only if within the last 12 months preceding the third quiet hours and common areas violation the resident or household members have not received three (3) or more of any combination of the following:

14-Day Notice

3 Day Notice to Perform or Quit

Notice to Pay Maintenance Charges

Counseling for any lease violation(s)

30-Day Notice to Cure or Quit

### **Thirty-Day Notice to Quit**

If lease signers should fail to complete referred sessions, or have received three (3) or more of the aforementioned notices, the designated property management staff shall serve a Thirty-Day Notice to Quit based on the Quiet Hours and Common Areas Policy and, if appropriate, other violations of the lease.

## **19.5 ENFORCEMENT**

### **Security Personnel/Law Enforcement**

Security personnel and law enforcement personnel contracted to provide services at the various housing developments shall participate in the enforcement of Quiet Hours and Common Areas Policy. Such enforcement shall include:

**Violation Recognition:** Should security/law enforcement officers observe anyone in or about any common area of the FH developments between the hours of 10:00 p.m. and 6:00 a.m., said officers shall have the authority to inquire of the person(s) as to their identity, whether they are residents of the housing development, and their reason(s) for being out during quiet hours. The purpose of the inquiry is to determine whether the person(s) are in violation of the Quiet Hours and Common Areas Policy.

Should security/law enforcement officers observe anyone in any common area of the FH developments, said officers shall have the authority to inquire of the person(s) as to their identity, whether they are residents of the housing development, and their reason(s) for being in the common area.

**Citing Violations:** Upon determining that a resident, guest, or visitor is in violation of the Quiet Hours and Common Areas Policy, the Property Manager or designated staff may then issue a written citation.

### **Enforcement by Management**

Community Coordinator, Property Specialist II, and Area Managers and/or designated property management staff shall have the authority to serve citations for violations of the Quiet Hours and Common Areas Policy.

## **19.6 GRIEVANCE PROCEDURE**

Residents shall have the right to file a grievance in response to actions taken by the FH concerning violations of the Quiet Hours and Common Areas Policy.

The FH Grievance Policy is subject to the Code of Federal Regulations, Title 24, Part 966, revised as of April 1, 1985, and as further amended. Residents shall follow the grievance procedures as set forth in Chapter 14 of this policy.

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## **CHAPTER 20 – LIPH FAMILY SELF-SUFFICIENCY (FSS) PROGRAM [24 CFR 984.101 – 401]**

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### **INTRODUCTION**

The FSS program encourages families to attain economic independence and self-sufficiency. Families receiving Low Income Public Housing (LIPH) rental assistance and participating in FSS are provided one-on-one case management services to identify career/education goals, build assets, increase earnings, and/or achieve homeownership. The objective of the FSS program is to assist low-income families in reducing/eliminating dependency on government assistance programs.

#### **20.0 FAMILY ELIGIBILITY [24 CFR 984.103]**

Participation in the FSS program is on a voluntary basis for families receiving rental assistance through the LIPH program administered by the FH.

#### **20.1 PROGRAM COORDINATING COMMITTEE (PCC) [24 CFR 984.202]**

The FH collaborates with a program coordinating committee (PCC) consisting of representatives from the public and private sector. The PCC is responsible to assist the FH in developing the FSS Action Plan. Other responsibilities include partnering with community organizations to provide supportive services and community resources to assist FSS families in overcoming barriers to self-sufficiency. These include, but are not limited to:

- Childcare
- Education
- Transportation
- Counseling
- Employment readiness
- Vocational training
- Homeownership education

#### **20.2 FSS FAMILY SELECTION PROCESS [24 CFR 984.203]**

The FH will open the FSS interest list as needed in order to maintain the minimum program size. When the interest list is open, families may use any one or more options to be placed on the interest list:

- Call the FH
- Submit an FSS Application in person or by mail

Families are contacted according to the date and time the family expressed an interest.

Eligible families are mailed an invitation to attend a one-on-one FSS orientation with an FSS Coordinator. At the orientation the family is given a general overview of the program and details on the roles and responsibilities of FSS participants, as well as the role of the FH. A description of supportive services, escrow accounts, program policies, expectations, and requirements for successful completion of the program is provided. Families and FH representative sign a Contract of Participation, Individual Training and Services Plan (ITSP), and complete the family profile. A needs assessment is conducted to develop the ITSP for achieving self-sufficiency.

Families who decide at the orientation not to participate in FSS will be removed from the FSS interest list.

### **20.3 DENIAL OF FSS PARTICIPATION [24 CFR 984.303]**

The FH may deny participation to families who:

- Owe money to the FH or any other Public Housing Authority (PHA)
- Failed to comply with the LIPH program at any PHA
- Failed to comply with the FSS program at any PHA
- Have successfully graduated from the FSS program with any PHA and received a full escrow payout.

### **20.4 CONTRACT OF PARTICIPATION [24 CFR 984.303]**

The designated Head-of-Household (HOH) and the FH representative must sign a Contract of Participation, which describes the rights and responsibilities of the FSS family and the FH. The effective date of the contract is the first month following the date both parties have signed the Contract of Participation. The term limit is five (5) years.

#### **Essential Components**

The following information must be entered into the contract for it to be valid:

- Contract start and end date
- Annual income
- Earned income
- Family rent portion (TTP or 30 percent of Monthly Adjusted Income for vouchers)
- Participant's signature and date
- FH Representative signature and date

#### **Contract Extensions**

Contracts may be extended up to a maximum of two (2) additional years with the approval of the FH. A written request must include "good cause," e.g., an FSS family is unable to complete the ITSP goals due to circumstances beyond the family's control. Other examples of "good cause" include but are not limited to:

- Serious illness
- Involuntary loss of employment
- Death in the family
- Separation/divorce
- Physical/mental impairment, external economic factors or other excruciating circumstances beyond the participants control which will require additional time to change and/or complete education/career goals
- Pursuit to homeownership
- Pursuit of higher education

During an extension to the contract, the family continues to have FSS amounts credited to the escrow account in accordance with 24 CFR 984.304.

### **Termination of the Contract**

[24 CFR 984.303(h)]

The contract of participation is automatically terminated if the family's LIPH rental assistance is terminated in accordance with HUD requirements. The contract of participation may be terminated before the expiration of the contract term, and any extension granted by the FH. The contract may be terminated for terms and conditions listed below:

- Failure of the FSS family to meet the obligations under the Contract of Participation without good cause;
- Failure to comply with the Contract requirements because the family has moved outside the jurisdiction of the FH;
- Failure to comply with the lease and the rules and regulations
- Such other act as is deemed inconsistent with the purpose of the FSS program.

The Contract of Participation may also terminate due to:

- Mutual consent of the parties;
- The family's withdrawal from the FSS program.

### **Completion of the Contract**

The Contract of Participation is considered to be completed, and a family's participation in the FSS program is considered to be concluded when one of the following occurs:

- The FSS family has fulfilled all of its obligations under the contract and obtained suitable employment on or before the expiration of the contract term, including any extension thereof, or

- The thirty (30) percent of the FSS family's monthly adjusted income equals or exceeds the base rent for the size of the unit for which the family qualifies based on FH occupancy standards.

## **20.5 INDIVIDUAL TRAINING AND SERVICES PLAN (ITSP) [24 CFR 984.303]**

The ITSP plan identifies the participants' job-related final goal, as well as interim goals. Timelines for completion are established for each goal. The final goal must include suitable full-time employment, which also demonstrates advancement in education/employment/vocational training. FSS coordinators monitor the progress of each FSS family.

The ITSP shall include:

- The resources and services to be provided by the HA
- Targeted completion dates for each individual interim goal
- Referrals for career, education, and job-related activities
- Final goal to obtain suitable full-time employment
- Interim goal must include the requirement to be off welfare assistance for twelve (12) consecutive months prior to the completion/expiration of the Contract, including any extensions. [24 CFR 984.303(b)(2)]
- Participant's signature and date
- FH Representative signature and date

The participant may change the goals and services in the ITSP by submitting a written request for the change. The final employment goal can be changed only if; 1) the new goal demonstrates full-time suitable employment and supports FFS program goals for self-sufficiency and 2) The interim goals aligns with the final goal. The ITSP goals may be revised no more than three (3) times during the five-year contract period or any extension thereof.

### **Change in Head of Household**

The FSS participant may designate a new HOH if the current HOH is unable to complete his/her obligations under the Contract of Participation. The request must be submitted to the FH in writing. The new HOH must sign and complete a new contract of participation and a new ITSP for goals and services. The start and end date of the new contract will remain the same as the original contract of participation.

### **Household with more than one ITSP**

The FSS family may have more than one ITSP in a single household. Although, other adults are eligible to enter into their own individual ITSP, the Contract of Participation remains with the HOH and each adult family member with an ITSP must complete the activities in the ITSP. The additional adults will not be eligible for an escrow pay out.

## 20.6 FSS ESCROW ACCOUNTS [24 CFR 984.305]

As incentive for families to join the FSS program and as a strategy to assist families in building assets, HUD regulations allow an escrow account to be established on behalf of eligible families. Eligibility for an escrow account is determined according to a HUD-defined formula using the family's earned income data [24 CFR 982.505].

As the family's earned income increases and the household rent increases, the FH calculates escrow eligibility according to the HUD formula to determine the amount of escrow credits. Escrow funds are held in the participant's name until the participant has met the requirements for final escrow disbursement.

Under the requirements for escrow disbursement, the FSS participant must have:

- Completed the goals in the ITSP
- Obtained suitable employment. The FH has determined suitable employment for the HOH as year round full-time sustainable employment to be not less than thirty (30) hours per week and the gross annual income is equal to or exceeds the state minimum wage multiplied by nineteen hundred and fifty (1950) hours. Seasonal employment does not meet the FH standards for suitable employment unless the HOH is employed all year round with multiple seasonal jobs.
- Certify that all members of the household have not received welfare assistance for twelve (12) consecutive months prior to the expiration of the term of the contract, including any extension thereof.
- Achieve an annual anticipated income whereby thirty (30) percent of the family's monthly adjusted income is equal to or exceeds the base rent for the size of unit which the FSS family qualifies based on the HA's occupancy standards.

The FH cannot restrict a family's use of FSS escrow account funds withdrawn by the family unless it is an interim disbursement to aid in the completion of an interim goal.

### **Interim Disbursement** [24 CFR 984.305(2)(ii)]

The FH may disburse a portion of the funds from the family's escrow account during the Contract of Participation for completing an interim goal, if the funds are used for purposes consistent with the Contract of Participation, such as, but not limited to:

- School tuition
- Business start-up expenses
- A vehicle if public transportation is unavailable or inaccessible to the family
- Job training expenses
- Down payment for a home

### **Forfeiture of Escrow Account**

[24 CFR 984.305(f)]

The FSS escrow account may be forfeited if the family fails to comply with the FSS program, and any one of the following is true:

- The Contract of Participation is terminated, according to 24 CFR 984.303 (e),(h)
- The Contract of Participation is declared null and void
- The family has not met its responsibilities as stated in the Contract of Participation
- The HOH has failed to obtain suitable employment on or before the expiration of the contract term, including any extension thereof
- An intergenerational family, whose HOH becomes independent of welfare assistance, however another family member (or other members) of another household in the same family continue to receive Temporary Assistance for Needy Families (CALWORKS). Note: if the family is receiving a CALWORKS child-only grant, or CALWORKS non-needy grant as stated in HUD Notice PIH 2007-20, forfeiture of the escrow account will not be considered.
- The head of the family dies and the remaining members of the family choose not to continue participating in the program, and the contract obligations were not met by the HOH prior to his/her departure.

### **Succession to FSS Account**

[24 CFR 984.305(d)]

If the FSS HOH no longer resides with other family members in the assisted unit, the other remaining adult members of the FSS family have the right to designate another adult family member to receive the funds. The FH must be consulted and must approve this change. The request for change of HOH must be submitted in writing, and must include the following:

- The name of the new designated FSS HOH
- The signature of the new FSS HOH
- The effective date of the change

An addendum to the FSS Contract must include the effective date of change and must be signed by the new HOH and the FH representative.

## **20.7 GRIEVANCE**

The FSS participant will be notified via mail of decisions affecting the family's participation in the FSS program. The notification will include the reasons for the decision and the FH policies and HUD regulations supporting it. If the participant disagrees with the decision, an appeal may be made within ten (10) business days of the notification (for any issues which can be appealed per 24 CFR 982.555(a)(1) and 984.303(i)). The appeal must be submitted in writing to the FH for review. The family will be notified in writing of the due

process, including the date set for an informal hearing.

## **20.8 TRANSFER**

The FSS family cannot port outside FH jurisdiction. However, the FSS family may transfer from one unit to another within the jurisdiction with the approval of FH, when the following occurs.

1. Emergency Transfers
2. Required Transfers
3. Resident Requested Transfers

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## **CHAPTER 21 – LIMITED ENGLISH PROFICIENCY (LEP)**

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### **INTRODUCTION**

In accordance with Executive Order 13166, "Improving Access Services for Persons with Limited English Proficiency," FH will provide meaningful access to its programs and activities by persons with Limited English Proficiency (LEP). This chapter describes how FH will undertake reasonable efforts to provide or arrange free language assistance for its LEP participants and applicants in the public housing programs as well as the general public.

### **21.0 MEANINGFUL ACCESS; FOUR-FACTOR ANALYSIS**

Meaningful access is free language assistance in accordance with federal guidelines. The FH will assess and update at least annually the following four-factor analysis, including but not limited to:

- The number or proportion of LEP persons eligible to be served or likely to be served by the FH.
- The frequency with which LEP persons using a particular language come into contact with the FH.
- The nature and importance of the FH program, activity or service to the person's life.
- The FH's resources and the cost of providing meaningful access.

### **21.1 LANGUAGE ASSISTANCE**

The following language assistance policies will apply:

- A person who does not speak English as their primary language AND who has a limited ability to read, write, speak or understand English may be a Limited English Proficient (LEP) person and may be entitled to language assistance with respect to FH programs and activities.
- Language assistance includes interpretation, which means oral or spoken transfer of a message from one language into another language; and/or translation, which means the written transfer of a message from one language into another language. FH will determine when interpretation and/or translation services are needed and are reasonable based upon the four-factor analysis.
- FH staff will take reasonable steps to provide language assistance to LEP clients who have difficulty communicating in English. Should a client ask for language assistance and FH determines that: a) the client is a LEP person and b) such assistance is necessary to provide meaningful access, FH will make reasonable efforts to provide free language assistance. FH will provide the language assistance in the LEP client's preferred language upon request.

FH will periodically assess client needs for language assistance based on the frequency of requests for interpreters and/or translation, as well as the literacy skills of clients.

## **21.2 TRANSLATION OF DOCUMENTS**

FH will consider the following factors in determining whether a document requires translation:

- Whether the document meets the threshold of a “vital document”. Per HUD guidance, “vital documents” are those that are critical for ensuring meaningful access by beneficiaries or potential beneficiaries generally and LEP persons specifically.
- The costs and benefits of translating documents for potential LEP groups, the barriers to meaningful translation or interpretation of technical housing information, the likelihood of frequent changes in documents, the existence of multiple dialects within a single language group, the literacy rate in an LEP group and other relevant factors. FH will undertake this examination when an eligible LEP group constitutes 5 percent of an eligible client group (for example, 5 percent of households living in FH housing developments) or 1,000 persons, whichever is less.

As opportunities arise, FH may work with other local Public Housing Authorities (PHAs) to share the costs of translating common documents.

As HUD continues to translate standard housing documents in multiple languages, FH will replace its translated versions with the official HUD versions. FH encourages HUD to provide this service to PHAs and other federally funded agencies whose limited resources hinder their LEP efforts.

FH will consider technological aids such as Internet-based translation services, which may provide helpful, although perhaps not authoritative, translations of written materials.

## **21.3 AUDIOVISUAL MATERIALS**

FH will make reasonable efforts to produce multiple translations of audiovisual materials it uses to inform or educate applicants, participants and other client groups. For example, FH provides headsets or interpreters at community or other meetings.

## **21.4 INTERPRETERS**

### **Formal Interpreters**

To provide meaningful access for LEP clients, FH will use the Language Line Services which provides accurate and complete interpretation in 156 languages. At important stages that require one-on-one contact, written translation and verbal interpretation services will be provided consistent with the four-factor analysis herein.

Outside vendors who are qualified interpreters shall be used at the following:

- Informal hearing(s) for denial of admission to public housing;
- Informal meetings for settlement agreements and formal hearings for termination of public housing;

### **Informal Interpreters**

Informal interpreters may include the family members, friends, legal guardians, service representatives or advocates of the LEP client. FH staff will determine whether it is appropriate to rely on informal interpreters, depending upon the circumstances and subject matter of the communication. However, in many circumstances, informal interpreters, especially minors, may not be an appropriate option to provide accurate interpretations. There may be issues of confidentiality, competency or conflict of interest.

An LEP person may use an informal interpreter of his/her own choosing and at his/her expense, either in place of or as a supplement to the free language assistance offered by the FH. If possible, FH should accommodate an LEP client's request to use an informal interpreter in place of a formal interpreter.

If an LEP client prefers an informal interpreter, after FH has offered free interpreter services, the informal interpreter may interpret. If the LEP person decides to provide his/her own interpreter, the LEP person's election of this choice will be documented. FH may require the family to sign a waiver of their right to the FH-supplied interpreter.

If an LEP client wants to use his/her own informal interpreter, FH reserves the right to also have a formal interpreter present.

## **21.5 OUTSIDE RESOURCES**

Outside resources may include community volunteers, FH public housing residents or Housing Choice Voucher/Section 8 participants.

Outside resources may be used for interpreting services at public or informal meetings or events if a timely request has been made.

FH will establish and maintain relationships with organizations that assist specific cultural and ethnic groups living in Fresno County. To help their clients obtain or keep housing assistance through FH, these organizations may provide qualified interpreters for LEP persons.

## **21.6 MONITORING**

FH will review and revise the LEP Policy (Exhibit 21) annually as part of the Agency Plan process. The review will include:

- a. Reports from FH's software system on the number of LEP clients, to the extent that the software and staff data entry can provide such information. Such reports may be supplemented by staff observations.
- b. A determination as to whether 5 percent or 1,000 persons from the FH public housing participants speak a specific language, which triggers consideration of document translation needs as described above.
- c. Analysis of staff requests for contract interpreters: number of requests, languages requested costs, etc.

## **21.7 LEP POLICY DISTRIBUTIONS AND TRAINING**

The LEP Policy will be:

- Distributed to all FH staff.
- Available at FH's Administrative Office.
- Posted on FH's website at [www.fresnohousing.org](http://www.fresnohousing.org)
- Explained in orientation and training sessions for supervisors and other staff who need to communicate with LEP clients.

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## CHAPTER 22 – ENTERPRISE INCOME VERIFICATION (EIV) SECURITY POLICIES AND PROCEDURES

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### 22.0 PRIVACY PROTECTION POLICY

EIV resident data will be used only to verify a resident's eligibility for participation in the Low Income Public Housing Program and to determine the level of assistance for which resident is eligible.

### 22.1 PRIVACY ACT

Data provided via the EIV System will be protected to ensure that information is used only for official purposes and not disclosed in any way that would violate the privacy of the individuals represented in the system data. Privacy of data and data security for computer systems are covered by a variety of Federal laws and regulations. The Privacy Act of 1974 as amended, 5 U.S.C. 552(a) is one such regulation.

Appendix 1 of the FH's EIV Security Policies and Procedures manual is a summary of the safeguards of the Privacy Act.

In compliance with HUD requirements, FH will implement three types of safeguards, technical safeguards, administrative safeguards, and physical safeguards.

#### **Technical Safeguards**

The purpose of the Technical Safeguards is to:

- Reduce the risk of a security violation related to the EIV system's software, network, or applications
- Identify and authenticate all users seeking access to the EIV data
- Monitor the user activity on the EIV system

Description of the Technical Safeguards includes two types of controls built into the EIV system:

- User Identification and Authentication:
  - Each user is required to have their own User ID and Password;
  - The User ID identifies the program administrators and resident information that the user is authorized to access;
  - Passwords are encrypted and the password file is protected from unauthorized access;
  - The system forces all users to change their password according to HUD security requirements and limits the reuse of previous passwords;

- After three unsuccessful attempts to log in, the User ID is locked and the user has to contact the PIH Security Administrator or the PIH User Administrator for further instructions.
- Online User Alerts:
  - Online Warning messages that inform user of the civil and criminal penalties associated with unauthorized use of the UIV data.

### **Physical Safeguards**

- The purpose of Physical Safeguards is to:
  - Provide barriers between unauthorized persons and documents containing private data and computer media containing files that contain private data;
  - Provide immediate notification, noticeable under normal operating conditions, if the barrier is penetrated by unauthorized persons;
  - Prevent viewing or sensing of private information by any person by any means from outside the area confined by the barrier.
- Physical Safeguards:
  - Locked and monitored buildings, offices, or storage rooms;
  - Locked and monitored metal file cabinets;
  - Designated secure areas and equipment;
  - 1. Security rooms or locked office space with limited (minimum required) points of entry (e.g., doors)
  - 2. Security rooms or locked office space with limited (minimum required) means of entry (e.g., keys)
  - 3. Restricted areas with prominently posted signs or other indicators identifying them and limited points of entry
  - 4. Physical and administrative means for monitoring access to the secure areas and access and use of the protected data
  - 5. Restricted use printers, copiers, facsimile machines, etc.
- Secure computer systems and output
  - Retrieve all computer printouts as soon as they are generated so that UIV data is not left lying unattended in printers;
  - Avoid leaving a computer unattended with UIV data displayed on the screen;
  - Staff is prohibited from downloading UIV data information into computer or a CD.
- Secure disposal of UIV information
  - It is the FH's policy and procedures to shred all UIV information upon purging resident file.

## **Administrative Safeguards**

- Purposes of the administrative safeguards:
  1. Ensure all users who have access to EIV data have an Access Authorization form signed by the Executive Director of the Housing Authority on File
  2. Ensure all users who access the EIV system have a current signed Rules of Behavior and User Agreement on file and updated annually
  3. Conduct quarterly reviews of all User IDs to determine if the user still has a valid need to access the EIV data, and
  4. Ensure the access rights are modified or revoked as appropriate.
- The PIH Security Administrator and the PIH User Administrator will maintain the following security records and forms:
  - EIV Rules of Behavior and User Agreement forms
  - EIV Access Authorization Forms
  - EIV Disposal records list
  - EIV Security violation information
  - Key control logs for secure areas or filing cabinets
  - EIV Security Awareness Training records
  - Records of internal audits to ensure that the Form HUD-9886 has been signed by each adult member of the household and is kept in the Confidential Resident File.
  - A record of all users who have approved access to EIV data including the date the access was granted and the date access was terminated
  - Monitor User Session and Activity Report
  - Monitor the Resident Data Access Audit Report
- Conducting Security Awareness Training:
  - Ensure that all users of UIV data receive training in UIV security policies and procedures at the time of employment and at least annually afterwards;
  - Maintain a record of all personnel who have attended training sessions;
  - Communicate security information and requirements to appropriate personnel using various methods including discussions at group and managerial meetings and security bulletins posted throughout the work areas;
  - Distribute all User Guides and Security Procedures to personnel using UIV data.

## **22.2 REPORTING OF IMPROPER DISCLOSURES**

These security violations may include the disclosure of private data as well as attempts to access unauthorized data and the sharing of User IDs and passwords. Upon the discovery of a possible improper disclosure of UIV information or another security violation by a program administrator employee or any other person, the individual making the observation or receiving the information should contact the PIH Security Administrator or the PIH User Administrator. The Security Administrator or the User Administrator or

designated staff should document all improper disclosures in writing providing details including who was involved, what was disclosed, how the disclosure occurred, and where and when it occurred regardless if the security violation was intentional or unintentional.

The following contacts should be made:

- The program administrator security officer should contact and provide the FH's Executive Director or the designee with the written documentation; and
- The FH Executive Director or the designee should provide the HUD Field Office Public Housing Director with the written documentation.

### **Enforcement**

Any employee found to have violated this policy may be subject to disciplinary action, up to and including termination of employment.

### **Appendix 1. Safeguards Provided by the Privacy Act**

The Privacy Act provides safeguards for individuals against invasion of privacy by requiring Federal agencies, except as otherwise provided by the law or regulation to:

- Permit individuals to know what records pertaining to them are collected, maintained, used or disseminated;
- Allow individuals to prevent records pertaining to them, obtained for a particular purpose from being used or made available for another purpose without their consent;
- Permit individuals to gain access to information pertaining to them, obtain a copy of all or any portions thereof, and correct or amend such records;
- Collect, maintain, use or disseminate personally identifiable information in a manner that ensure the information is current and accurate, and that adequate safeguards are provided to prevent misuses of such information;
- Permit exemption from the requirements of the Act only where an important public policy need exists as determined by specific statutory authority; and
- Be subject to a civil suit for any damages that occur as a result of action that violates any individual's rights under this Act.

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## CHAPTER 23 – SMOKE-FREE POLICY

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### INTRODUCTION

In order to create healthy communities and provide a smoke-free environment for all public housing residents, visitors, and FH staff. FH has declared that all public housing communities have a Smoke-Free Policy (Exhibit 23.1).

In accordance with PIH Notice-2012-reissuance 24 CFR 903.7-965 Subpart G smoking (including, but not limited to, smoking cigarettes, cigars, pipe, e-cigarettes, and water pipes; also known as hookahs) is prohibited in all FH public housing communities.

This includes all indoor areas including but not limited to residential units, offices, community buildings, day care centers, laundry centers and common areas; and within twenty-five (25) feet of said buildings and outdoor areas (apartments, entryways, walkways, grassed areas, play areas, parking lots and private vehicles parked on FH property). Per California Law an apartment complex that includes a children's play area or "tot lot" sandbox area, your landlord must prohibit smoking within 25 feet under state law.

Smoking outside is limited to the following areas: designated smoking area, public areas, sidewalks and streets.

The term "smoking" is defined as inhaling, exhaling, burning, or carrying any lit cigar, cigarette, pipe, visible vapor or other similar prohibited tobacco products, including in any manner or any form. Prohibited tobacco products include, but are not limited to e-cigarettes in any manner or in any forms, water pipes or hookahs.

The Smoke Free Policy applies to all visitors, residents, contractors, volunteers, vendors, and FH employees. Residents and members of the household shall be responsible to enforce this Smoke Free Policy as to their guests, invitees, and visitors to their residential units or the property.

#### 23.1 **Responsibilities**

It is the responsibility of the FH staff to educate residents and visitors about the No Smoking Policy. Printed material will be available for visitors at the property office. FH has posted signage that reads "No Smoking Allowed except in designated area" and the designated smoking area will be clearly marked.

All public housing residents and their guest, invitees, and visitors are expected to:

- Comply with the Resident Lease Agreement or applicable addenda and House Rules;
- Not smoke in any resident unit, Housing Authority offices, and within twenty-five (25) feet of any community buildings, play areas, doors and windows at said premises;
- Not cause or permit a nuisance;

- Not interfere, or cause or permit interference with, the reasonable peace, comfort or privacy of others;
- Be responsible for behavior, conduct of their occupants and/or visitors to their unit, and ensure their compliance with FH designated tobacco-free units and common areas.

### **23.2 Violations**

A violation of the Smoke Free Policy will be considered a material violation of the residential lease. FH will utilize the following process to address the violations of the ~~No Smoking~~ Smoke-Free Policy:

1<sup>st</sup> Violation- Verbal warning. FH may provide smoking cessation materials and a friendly warning letter acknowledging the conversation.

2<sup>nd</sup> Violation- A written letter of warning will be given and FH may provide smoking cessation materials.

3<sup>rd</sup> Violation- A final written violation letter will be served upon the resident but resident will be given the option to remedy.

4<sup>th</sup> Violation- A 30-day lease termination - ~~No~~ Notice to Terminate Tenancy will be issued.

### **23.3 Cessation Resources**

All residents will be offered information regarding cessation programs and provided with access tools to assist them in quitting tobacco use, if they so choose.

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## **EXHIBITS**

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

**EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES**

**EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS**

**EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS**

**EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS**

**EXHIBIT 6-4: EARNED INCOME DISALLOWANCE**

**EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION**

**EXHIBIT 7-1: EXCERPT FROM HUD VERIFICATION GUIDANCE NOTICE (PIH 2004-01, PP. 11-14)**

**EXHIBIT 7-2: SUMMARY OF DOCUMENTATION REQUIREMENTS FOR NONCITIZENS [HCV GB, PP. 5-9 AND 5-10]**

**EXHIBIT 11-1: COMMUNITY SERVICE AND SELF-SUFFICIENCY POLICY**

**EXHIBIT 11-2: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(I)(L) AND SECTION 1416(EXCERPT) FOR PURPOSES OF EXEMPTION FROM COMMUNITY SERVICE**

**EXHIBIT 11-3: PHA DETERMINATION OF EXEMPTION FOR COMMUNITY SERVICE**

**EXHIBIT 11-4: CSSR WORKOUT AGREEMENT**

**EXHIBIT 16-1: HUD-5380 NOTICE OF OCCUPANCY RIGHTS UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

**EXHIBIT 16-2: HUD-5382, CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSULT, OR STALKING, AND ALTERNATIVE DOCUMENTATION**

**EXHIBIT 16-3: HUD-5381, MODEL EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING.**

**EXHIBIT 16-4: EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSULT, OR STALKING**

**EXHIBIT 16-5: FH VAWA POLICY**

**EXHIBIT 21.1: LANGUAGE ASSISTANCE PLAN**

<b>EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER FEDERAL CIVIL RIGHTS LAWS [24 CFR Parts 8.3 and 100.201]</b>
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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 (other than addiction caused by current, or illegal, use of a controlled substance) and alcoholism.

“Major life activities” includes, but is not limited to, caring for one’s self, 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 the PHA) 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.

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## 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  
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.
  - (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.

### **Individual with Disability [24 CFR 8.3]**

*Individual with disability* 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:

- Physical or mental impairment includes:
  - 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
  - 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 means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- 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.
- Is regarded as having an impairment means:
  - 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
  - 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
  - Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment

## 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 (CALWORKS) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the CALWORKS program definition at 45 CFR 260.311; and

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

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(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)

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

#### **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 CALWORKS 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) Subject to paragraph (b)(9) of this section, 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, childcare, 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
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- 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).

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## 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 therefor. 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

### 24 CFR 960.255 Self-sufficiency incentive—Disallowance of increase in annual income.

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

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

**Disallowance.** Exclusion from annual income.

**Previously unemployed** includes a person 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 public housing:

(i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;

(ii) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or

(iii) Whose annual income increases, as a result of new employment or increased earnings of a family member, 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 PHA in consultation with the local agencies administering temporary assistance for needy families (CALWORKS) and Welfare-to-Work (WTW) programs. The CALWORKS 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.

(b) *Disallowance of increase in annual income.*

(1) *Initial twelve month exclusion.* During the 12-month period beginning on the date on which a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from the annual income (as defined in 5.609 of this title) of a qualified family any increase in the income of the family member as a result of employment over the baseline income of that family member.

(2) *Phase-in of rent increase.* Upon the expiration of the 12-month period defined in paragraph (b)(1) of this section and for the subsequent 12-month period, the PHA must exclude from the annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.

(3) *Maximum 2-year disallowance.* The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 24-month period. It applies for a maximum of 12 months for disallowance under paragraph (b)(1) of this section and a maximum of 12 months for disallowance under paragraph (b)(2) of this section, during the 24-month period starting from the initial exclusion under paragraph (b)(1) of this section.

(4) *Effect of changes on currently participating families.* Families eligible for and participating in the disallowance of earned income under this section prior to May 9, 2016 will continue to be governed by this section in effect as it existed immediately prior to that date.

(c) *Inapplicability to admission.* The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).

(d) *Individual Savings Accounts.* As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a PHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:

- (1) The PHA must advise the family that the savings account option is available;
- (2) At the option of the family, the PHA must deposit in the savings account the total amount that would have been included in tenant rent payable to the PHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;
- (3) Amounts deposited in a savings account may be withdrawn only for the purpose of:

- (i) Purchasing a home;
  - (ii) Paying education costs of family members;
  - (iii) Moving out of public or assisted housing; or
  - (iv) Paying any other expense authorized by the PHA for the purpose of promoting the economic self-sufficiency of residents of public housing;
- (4) The PHA must maintain the account in an interest bearing investment and must credit the family with the net interest income, and the PHA may not charge a fee for maintaining the account;
  - (5) At least annually the PHA must provide the family with a report on the status of the account; and
  - (6) If the family moves out of public housing, the PHA shall pay the tenant any balance in the account, minus any amounts owed to the PHA.

## 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.

**Exhibit 7-1: Excerpt from HUD Verification Guidance Notice (PIH 2004-01, pp. 11-14)**

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

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 or fax or in person.	The PHA 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 PHA's written request for information, the PHA 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 PHA may accept original documents such as consecutive pay stubs (HUD recommends the PHA 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. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares the family's total annual income from earnings. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.
	Agreements with private vendor agencies, such as The Work Number or ChoicePoint to obtain wage and salary information.	The PHA may have the tenant sign a Request for Earnings Statement from the SSA to confirm past earnings. The PHA mails the form to SSA and the statement will be sent to the address the PHA specifies on the form.			
	Use of HUD systems, when available.	The PHA mails the form to SSA and the statement will be sent to the address the PHA specifies on the form.			
<b>Verification of Employment Income:</b> The PHA should always obtain as much information as possible about the employment, such as start date (new employment), termination date (previous employment), pay frequency, pay rate, anticipated pay increases in the next twelve months, year-to-date earnings, bonuses, overtime, company name, address and telephone number, name and position of the person completing the employment verification form.					
<b>Effective Date of Employment:</b> The PHA should always confirm start and termination dates of employment.					

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 PHA mails or faxes a verification form directly to sources identified by the family to obtain income information.	The PHA may call the source to obtain income information.	The PHA may accept any documents (i.e. tax returns, invoices and letters from customers) provided by the tenant to verify self-employment income. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not obtained.	The PHA may accept a notarized statement or affidavit from the tenant that declares the family's total annual income from self-employment. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.
<b>Verification of Self-Employment Income:</b> Typically, it is a challenge for PHAs to obtain third party verification of self-employment income. When third party verification is not available, the PHA should always request a notarized tenant declaration that includes a perjury statement.					
Social Security Benefits	Use of HUD Tenant Assessment System (TASS) to obtain current benefit history and discrepancy reports.	The PHA mails or faxes a verification form directly to the local SSA office to obtain social security benefit information. <b>(Not Available in some areas because SSA makes this data available through TASS. SSA encourages PHAs to use TASS.)</b>	The PHA may call SSA, with the tenant on the line, to obtain current benefit amount. <b>(Not Available in some areas because SSA makes this data available through TASS. SSA encourages PHAs to use TASS.)</b>	The PHA may accept an original SSA Notice from the tenant. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly social security benefits. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.
Welfare Benefits	Use of computer matching agreements with the local Social Services Agency to obtain current benefit amount electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the local Social Services Agency to obtain welfare benefit information.	The PHA may call the local Social Services Agency to obtain current benefit amount.	The PHA may review an original award notice or printout from the local Social Services Agency provided by the tenant. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly welfare benefits. <b>Note:</b> The PHA must document 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 PHA mails, faxes, or e-mails a verification form directly to the local Child Support Enforcement Agency or child support payer to obtain current child support amount and payment status.	The PHA may call the local Child Support Enforcement Agency or child support payer to obtain current child support amount and payment status.	The PHA 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. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares current child support amount and payment status. <b>Note:</b> The PHA must document 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.  Use of HUD systems, when available.	The PHA mails, faxes, or e-mails a verification form directly to the State Wage Information Collection Agency to obtain unemployment compensation information.	The PHA may call the State Wage Information Collection Agency to obtain current benefit amount.	The PHA may review an original benefit notice or unemployment check stub, or printout from the local State Wage Information Collection Agency provided by the tenant. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares unemployment benefits. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not 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 PHA mails, faxes, or e-mails a verification form directly to the pension provider to obtain pension information.	The PHA may call the pension provider to obtain current benefit amount.	The PHA may review an original benefit notice from the pension provider provided by the tenant. <b>Note:</b> The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly pension amounts. <b>Note:</b> The PHA must document 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)
Assets	Use of cooperative agreements with sources to obtain asset and asset income information electronically, by mail or fax or in person.	The PHA mails, faxes, or emails a verification form directly to the source to obtain asset and asset income information.	The PHA may call the source to obtain asset and asset income information.	The PHA may review original documents provided by the tenant. <b>Note: The PHA must document in the tenant file, the reason third party verification was not available.</b>	The PHA may accept a notarized statement or affidavit from the tenant that declares assets and asset income. <b>Note: The PHA must document in the tenant file, the reason third party verification was not available.</b>
Comments	Whenever HUD makes available wage, unemployment, and SSA information, the PHA should use the information as part of the reexamination process. Failure to do so may result in disallowed costs during a RIM review.	<b>Note:</b> The independent source completes the form and returns the form directly to the PHA. Agency. The tenant should not hand carry documents to or from the independent source.	The PHA should document in the tenant file, the date and time of the telephone call or in person visit, along with the name and title of the person that verified the current income amount.		The PHA should use this verification method as a last resort, when all other verification methods are not possible or have been unsuccessful. <b>Notarized statement should include a perjury penalty statement.</b>
<b>Note:</b> The PHA must not pass verification costs along to the participant.					
<b>Note:</b> In cases where the PHA cannot reliably project annual income, the PHA may elect to complete regular interim reexaminations (this policy should be apart of the PHA's written policies.)					

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

<ul style="list-style-type: none"> <li>• <b>All</b> noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.</li> </ul> <ol style="list-style-type: none"> <li>1. Except for persons 62 or older, all noncitizens must sign a verification consent form</li> </ol> <ul style="list-style-type: none"> <li>• Additional documents are required based upon the person's status.</li> </ul>	
<b>Elderly Noncitizens</b> <ul style="list-style-type: none"> <li>• 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.</li> </ul>	
<b>All other Noncitizens</b> <ol style="list-style-type: none"> <li>a. Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.</li> </ol>	
<ol style="list-style-type: none"> <li>2. Form I-551 Alien Registration Receipt Card (for permanent resident aliens)</li> <li>3. Form I-94 Arrival-Departure Record annotated with one of the following:               <ol style="list-style-type: none"> <li>4. "Admitted as a Refugee Pursuant to Section 207"</li> <li>5. "Section 208" or "Asylum"</li> <li>6. "Section 243(h)" or "Deportation stayed by Attorney General"</li> <li>7. "Paroled Pursuant to Section 221 (d)(5) of the USCIS"</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>8. Form I-94 Arrival-Departure Record with no annotation accompanied by:               <ol style="list-style-type: none"> <li>9. A final court decision granting asylum (but only if no appeal is taken);</li> <li>10. 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);</li> <li>11. A court decision granting withholding of deportation; or</li> <li>12. A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).</li> </ol> </li> </ol>
<ol style="list-style-type: none"> <li>13. Form I-766 Temporary Resident Card annotated "Section 245A" or Section 210". *Note: October 1, 2016, USCIS eliminated use of I-688, I-688A, and I-688B</li> </ol>	<ol style="list-style-type: none"> <li>Form I-766* Employment Authorization Card annotated "Provision of Law 274a. 12(11)" or "Provision of Law 274a.12".</li> </ol>
<ol style="list-style-type: none"> <li>14. 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</li> <li>15. Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the <i>Federal Register</i></li> </ol>	

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## **EXHIBIT 11-1: COMMUNITY SERVICE AND SELF-SUFFICIENCY POLICY**

### **A. Background**

The Quality Housing and Work Responsibility Act of 1998 requires that all nonexempt (see definitions) public housing adult residents (18 or older) contribute eight (8) hours per month of community service (volunteer work) or participate in eight (8) hours of training, counseling, classes or other activities that help an individual toward self-sufficiency and economic independence. This is a requirement of the public housing lease.

### **B. Definitions**

**Community Service** – community service activities include, but are not limited to work at:

- Local public or nonprofit institutions such as schools, head start programs, before or after school programs, child care centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult day care programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing)
- Nonprofit organizations serving FH residents or their children such as: Boy or Girl Scouts, Boys or Girls Club, 4-H clubs, Police Assistance League (PAL), organized children's recreation, mentoring or education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs
- Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels
- Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts
- PHA housing to improve grounds or provide gardens (so long as such work does not alter the PHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board
- Care for the children of other residents so parent may volunteer

**NOTE:** Political activity is excluded.

**Self-Sufficiency Activities** – activities that include, but are not limited to:

- Job readiness or job training
- Training programs through local one-stop career centers, workforce investment boards (local entities administered through the U.S. Department of Labor), or other training providers
- Employment counseling, work placement, or basic skills training
- Education, including higher education (junior college or college), GED classes, or reading, financial, or computer literacy classes
- Apprenticeships (formal or informal)
- English proficiency or English as a second language classes
- Budgeting and credit counseling
- Any activity required by the Department of Public Assistance under

Temporary Assistance for Needy Families (CALWORKS)

- Any other program necessary to ready a participant to work (such as substance abuse or mental health counseling)

**Exempt Adult** – an adult member of the family who meets any of the following criteria:

- Is 62 years of age or older
- Is blind or a person with disabilities (as defined under section 216[i][I] or 1614 of the Social Security Act), and who certifies that because of this disability he or she is unable to comply with the service provisions, or is the primary caretaker of such an individual
- Is engaged in *work activities*
- Is able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program; or
- Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program, and has not been found by the state or other administering entity to be in noncompliance with such program.

**Work Activities** – as it relates to an exemption from the community service requirement, *work activities* means:

- Unsubsidized employment
- Subsidized private sector employment
- Subsidized public sector employment
- Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available
- On-the-job training
- Job search and job readiness assistance
- Community service programs
- Vocational educational training (not to exceed 12 months with respect to any individual)
- Job skills training directly related to employment
- Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency
- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate
- Provision of child care services to an individual who is participating in a community service program

### **C. Requirements of the Program**

1. The eight (8) hours per month may be either volunteer work or self-sufficiency program activity, or a combination of the two.
2. At least eight (8) hours of activity must be performed each month or may be aggregated across a year. Any blocking of hours is acceptable as long as 96 hours is completed by each annual certification of compliance.
3. Family obligation:
  - At lease execution, all adult members (18 or older) of a public housing resident family must:
    - a. Sign a certification (Attachment A) that they have received and read this policy and understand that if they are not exempt, failure to comply with the community service requirement will result in a nonrenewal of their lease; and
    - b. Declare if they are exempt. If exempt, they must complete the Exemption Form (Exhibit 11-3) and provide documentation of the exemption.
  - Upon written notice from the FH, nonexempt family members must present complete documentation of activities performed during the applicable lease term. This documentation will include places for signatures of supervisors, instructors, or counselors, certifying to the number of hours contributed.
  - If a family member is found to be noncompliant at the end of the 12-month lease term, he or she, and the head of household, will be required to sign an agreement with the housing authority to make up the deficient hours over the next twelve (12) month period, or the lease will be terminated.
  - At annual reexamination, the family must also sign a certification certifying that they understand the community service requirement.
4. Change in exempt status:
  - If, during the twelve (12) month lease period, a nonexempt person becomes exempt, it is his or her responsibility to report this to FH and provide documentation of exempt status.
  - If, during the twelve (12) month lease period, an exempt person becomes nonexempt, it is his or her responsibility to report this to FH. Upon receipt of this information, FH will provide the person with the appropriate documentation form(s) and a list of agencies in the community that provide volunteer and/or training opportunities.

#### **D. Authority Obligation**

1. To the greatest extent possible and practicable, the FH will:
  - Provide names and contacts at agencies that can provide opportunities for residents, including residents with disabilities, to fulfill their community service obligations.
  - Provide in-house opportunities for volunteer work or self-sufficiency activities.
2. FH will provide the family with a copy of this policy, and all applicable exemption verification forms and community service documentation forms, at lease-up, lease renewal, when a family member becomes subject to the community service requirement during the lease term, and at any time upon the family's request.
3. Although exempt family members will be required to submit documentation to support their exemption, FH will verify the exemption status in accordance with its verification policies. FH will make the final determination as to whether or not a family member is exempt from the community service requirement. Residents may use FH's grievance procedure if they disagree with the FH's determination.
4. Noncompliance of family member:
  - At least thirty (30) days prior to the end of the 12-month lease term, FH will begin reviewing the exempt or nonexempt status and compliance of family members;
  - If, at the end of the initial 12-month lease term under which a family member is subject to the community service requirement, FH finds the family member to be noncompliant, the PHA will not renew the lease unless:
    - c. The head of household and any other noncompliant resident enter into a written agreement with FH, to make up the deficient hours over the next twelve (12) month period; or
    - d. The family provides written documentation satisfactory to FH that the noncompliant family member no longer resides in the unit.
  - If, at the end of the next 12-month lease term, the family member is still not compliant, a 30-day notice to terminate the lease will be issued and the entire family will have to vacate, unless the family provides written documentation satisfactory to FH that the noncompliant family member no longer resides in the unit;
  - The family may use the FH's grievance procedure to dispute the lease termination.

All adult family members must sign and date below, certifying that they have read and received a copy of this Community Service and Self-Sufficiency Policy.

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

DRAFT

<p align="center"><b>EXHIBIT 11-2: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(i)(I) and Section 1416(excerpt) FOR PURPOSES OF EXEMPTION FROM COMMUNITY SERVICE</b></p>
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**Social Security Act:**

**216(i)(1):** Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term “disability” means (A) 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 has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term “blindness” means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

**Section 1416** (excerpt):

SEC. 1614. [42 U.S.C. 1382c] (a)(1) For purposes of this title, the term “aged, blind, or disabled individual” means an individual who

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act), or

(ii) is a child who is a citizen of the United States and, who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.

(2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this title if he is unable 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 twelve months.

### EXHIBIT 11-3: PHA DETERMINATION OF EXEMPTION FOR COMMUNITY SERVICE

Family: \_\_\_\_\_

Adult family member: \_\_\_\_\_

This adult family member meets the requirements for being exempted from the FH's community service requirement for the following reason:

- ☐ 62 years of age or older (*Documentation of age in file*)
- ☐ Is a person with disabilities and self-certifies below that he or she is unable to comply with the community service requirement (*Documentation of HUD definition of disability in file*)

**Resident certification:** I am a person with disabilities and am unable to comply with the community service requirement.

\_\_\_\_\_  
Signature of Family Member

\_\_\_\_\_  
Date

- ☐ Is the primary caretaker of such an individual in the above category. (*Documentation in file*)
- ☐ Is engaged in work activities (*Verification in file*)
- ☐ Is able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program (*Documentation in file*)
- ☐ Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program, and the supplemental nutrition assistance program (SNAP) has not been found by the state or other administering entity to be in noncompliance with such program (*Documentation in file*)

\_\_\_\_\_  
Signature of Family Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of PHA Official

\_\_\_\_\_  
Date

Date \_\_\_\_\_

Noncompliant Adult: \_\_\_\_\_

Adult family member: \_\_\_\_\_

**Community Service & Self-Sufficiency Requirement (CSSR):**

Under Section 12 of the U.S. Housing Act, the \_\_\_\_\_ (insert name of PHA) is required to enforce the community service and self-sufficiency requirement (CSSR). Under the CSSR, each nonexempt adult family member residing in the public housing must perform 8 hours per month of community service or self-sufficiency activities.

**Noncompliance:** \_\_\_\_\_ (insert name of PHA) has found that the nonexempt individual named above is in noncompliance with the CSSR. This work-out agreement is the FH's written notification to you of this noncompliance.

Our records show that for the most recent lease term you were required to perform \_\_\_\_\_ hours of CSSR activities. However, there were \_\_\_\_\_ hours of verified CSSR activities. Therefore, you are in noncompliance for \_\_\_\_\_ hours.

\_\_\_\_\_ (insert name of PHA) will not renew the lease at the end of the current 12-month lease term unless the head of household and noncompliant adult sign a written work-out agreement with \_\_\_\_\_ (insert name of PHA) or the family provides written assurance that is satisfactory to \_\_\_\_\_ (insert name of PHA) explaining that the noncompliant adult no longer resides in the unit. The regulations require that the work-out agreement include the means through which a noncompliant family will comply with the CSSR requirement. [24 CFR 960.607(c), Notice PIH 2015-12]. The terms of the CSSR work-out agreement are on the reverse side of this page.

**Enforcement:** Should a family member refuse to sign this CSSR work-out agreement, or fail to comply with the terms of this CSSR work-out agreement, or fail to provide satisfactory written assurance that the noncompliant adult no longer resides in the unit \_\_\_\_\_ (insert name of PHA) is required to initiate termination of tenancy proceedings at the end of the current 12-month lease [24 CFR 966.53(c) ]

Terms of CSSR Work-Out Agreement

**Noncompliant Adult:** \_\_\_\_\_

**Please check one of the below boxes:**

I head of household or spouse/co-head] certify that the noncompliant adult named above no longer \_\_\_\_\_ resides in the unit. [Verification attached.]

I, the noncompliant adult named above, agree to complete \_\_\_\_\_ hours in the upcoming 12-month lease term. These hours include the \_\_\_\_\_ hours not fulfilled in the most previous least term, plus the 96 hours for the upcoming lease term.

Below is a description of means through which I will comply with the CSSR requirement:

	<u>Description of Activity</u>	<u>Number of Hours</u>
1		
2		
3		
4		
5		
	<u>Total Hours</u>	

**SIGNED AND ATTESTED THIS DATE**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 \_\_\_\_\_ Head of Household

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Noncompliant Adult, if other than Head of Household

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 FH Official

<b>EXHIBIT 16-1: FORM HUD-5380 NOTICE OF OCCUPANCY RIGHTS UNDER THE VIOLENCE AGAINST WOMEN ACT</b>
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*These notices were adopted from PIH Alert 2017-08 VAWA 2013 final rule.*

**[Fresno Housing (FH)]**

**Notice of Occupancy Rights under the Violence against Women Act<sup>2</sup>**

**To all Tenants and Applicants**

The Violence against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.<sup>3</sup> The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that programs such as Housing Choice Voucher Program (HCV), HUD-VASH Program(VASH), HOME Tenant Based Rental Assistance(TBRA), Project Based Voucher (PBV), and Continuum of Care (CoC) administered under FH's Assisted Housing Division (AHD), Low Income Public Housing (LIPH), HOME Investment Partnership (HOME), Multifamily Project Rental Assistance (PBRA), Multifamily Project Based Section 8 operated under the California Finance Housing Agency (CalHFA) programs [HUD Programs] are in compliance with VAWA. Properties operated solely or in conjunction with one or more of the above and/or regulated under the Low Income Housing Tax Credit, (LIHTC) Internal Revenue Code (IRC) Section 42 program (Affordable Housing Program), administered under the Housing Management Division (HMD) are also to maintain compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence; dating

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<sup>2</sup> Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

<sup>3</sup> Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

### **Protections for Applicants**

If you otherwise qualify for assistance under one or more of the above HUD funded and/or LIHTC program, you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

### **Protections for Tenants**

If you are receiving assistance under one or more of the above HUD funded and/or LIHTC program, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under one or more of the above HUD funded and/or LIHTC program solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

### **Removing the Abuser or Perpetrator from the Household**

The Housing Provider, (Owner/Managing Agency) may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If Owner/Managing Agent chooses to remove the abuser or perpetrator, Owner/Managing Agent may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, Owner/Managing Agent must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, Owner/Managing Agent must follow Federal, State, and local eviction procedures. In order to divide a lease, Owner/Managing Agent may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

### **Moving to Another Unit**

Upon your request, FH/Owner/Managing Agent may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, FH may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

**(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.

**(2) You expressly request the emergency transfer.** Your housing provider may choose to require that you submit a form, or may accept another written or oral request.

**(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

**OR**

**You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer.** If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

FH will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

FH emergency transfer plan provides further information on emergency transfers, and FH must make a copy of its emergency transfer plan available to you if you ask to see it.

### **Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking**

FH can, but is not required to, ask you to provide documentation to “certify” that you are or have

been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from FH must be in writing, and FH must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. FH may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to FH as documentation. It is your choice which of the following to submit if FH asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

1. A complete HUD-approved certification form given to you by FH with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
2. A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
3. A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, "professional") from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
4. Any other statement or evidence that FH has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, FH does not have to provide you with the protections contained in this notice.

If FH receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), FH has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, FH does not have to provide you with the protections contained in this notice.

### **Confidentiality**

FH must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

FH must not allow any individual administering assistance or other services on behalf of FH (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

FH must not enter your information into any shared database or disclose your information to any other entity or individual. FH, however, may disclose the information provided if:

1. You give written permission to FH to release the information on a time limited basis.
2. FH needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
3. CA law requires FH or your landlord to release the information.

VAWA does not limit FH duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

### **Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated**

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, FH cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if FH can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

- 1) Would occur within an immediate time frame, and
- 2) Could result in death or serious bodily harm to other tenants or those who work on the property.

If FH can demonstrate the above, FH should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

### **Other Laws**

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

### **Non-Compliance with The Requirements of This Notice**

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **National Housing Law Project at (415) 546-7000.**

**For Additional Information**

You may view a copy of HUD's final VAWA rule at

<https://portal.hud.gov/hudportal/documents/huddoc?id=5720-F-03VAWAFinRule.pdf>

Additionally, FH must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact **Marjaree Mason Center at (800) 640-0333 (24 hr.).**

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact **Women's Resource Center- Violence Prevention Program- California State University Fresno at 559-278-4435.**

Victims of stalking seeking help may contact **Family Justice Center at (559) 621-2225.**

**Attachment:** Certification form HUD-5382 [form approved for this program to be included]

<p align="center"><b>EXHIBIT 16-2: HUD-5382 CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING AND ALTERNATE DOCUMENTATION</b></p>
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**CERTIFICATION OF  
DOMESTIC VIOLENCE,  
DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING,  
AND ALTERNATE DOCUMENTATION**

**U.S. Department of Housing  
and Urban Development**

OMB Approval No. 2577-0286  
Exp. 06/30/2017

**Purpose of Form:** The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

**Use of This Optional Form:** If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

**Submission of Documentation:** The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

**Confidentiality:** All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are

not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE,  
DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

**1. Date the written request is received by victim:**

\_\_\_\_\_

**2. Name of victim:**

\_\_\_\_\_

**3. Your name (if different from victim's):** \_\_\_\_\_

**4. Name(s) of other family member(s) listed on the lease:** \_\_\_\_\_

\_\_\_\_\_

**5. Residence of victim:**

\_\_\_\_\_

**6. Name of the accused perpetrator (if known and can be safely disclosed):**

\_\_\_\_\_

**7. Relationship of the accused perpetrator to the victim:**

\_\_\_\_\_

**8. Date(s) and times(s) of incident(s) (if known):**

\_\_\_\_\_

**10. Location of incident(s):**

\_\_\_\_\_

In your own words, briefly describe the incident(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_

**Public Reporting Burden:** The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

DRAFT

<p><b>EXHIBIT 16-3: FORM HUD-5381 VAWA EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING</b></p>
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**Fresno Housing**

**Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence,  
Sexual Assault, or Stalking**

**Emergency Transfers**

**Fresno Housing Authorities (FH)** is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),<sup>4</sup> FH allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.<sup>5</sup> The ability of FH to honor such request for tenants currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether FH has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban

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<sup>4</sup> Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

<sup>5</sup> Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

Development (HUD); the Federal agency that oversees that programs such as; Housing Choice Voucher Program (HCV), Project Based Voucher (PBV), Veteran's Affairs Supportive Housing (VASH), HOME Tenant Based Rental Assistance (TBRA), Family Unification Program (FUP), Family Unification Program- Youth(FUP-Y), and Continuum of Care (CoC) administered under FH's Assisted Housing Division (AHD), Low Income Public Housing (LIPH), HOME Investment Partnership (HOME), Multifamily Project Rental Assistance (PBRA), Multifamily Project Based Section 8 operated under the California Finance Housing Agency (CalHFA) programs [HUD Programs] are in compliance with VAWA. Properties operated solely or in conjunction with one or more of the above and/or regulated under the Low Income Housing Tax Credit, (LIHTC) Internal Revenue Code (IRC) Section 42 program (Affordable Housing Program), administered under the Housing Management Division (HMD) are also to maintain compliance with VAWA.

### **Eligibility for Emergency Transfers**

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L is eligible for an emergency transfer, if: the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.

A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

### **Emergency Transfer Request Documentation**

To request an emergency transfer, the tenant or participant shall start by notifying FH of the need to request the emergency transfer by completing the Emergency Transfer Request Form (HUD Form 5383). FH will provide the tenant or participant with information in writing requesting required documentation. The Tenant or Participant will then have fourteen (14) business days to submit one of the four (4) acceptable methods of documentation listed below.

1. **HUD-Approved form** – by providing to FH or to the requesting Section 8 owner or manager a written certification, on a form approved by the U.S. Department of Housing and Urban Development (HUD Form 5382):

- i. That the individual is a victim of domestic violence, dating violence, sexual assault or stalking;
- ii. That the incident or incidents in question are bona fide incidents of actual or threatened abuse meeting the requirements of the applicable definitions set forth in this policy;
- iii. Includes the name of the perpetrator, if the name is known to the tenant or participant and safe to provide.

2. **Other Documentation-** In lieu of the certification form or in addition to the certification form FH may accept documentation signed by both:

- i. An employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing the domestic violence, dating violence, sexual assault or stalking; and
- ii. The participant or tenant

The documentation shall state, under penalty of perjury, the professional's belief that the incident or incidents in question meet the requirements of the applicable definition(s) set forth in this policy.

3. **Police or Court Record-** by providing to FH or to the requesting Section 8 owner or manager a Federal, State, tribal, territorial, or local police or court record describing the incident or incidents in question.

4. A statement or other evidence provided by an participant or tenant.

The tenant or participant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant or participant reasonably believes that there is a threat of imminent harm from further violence if they were to remain in the same dwelling unit assisted under FH program; OR
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

FH will provide reasonable accommodations to this policy for individuals with disabilities.

### **Emergency Transfer Timing and Availability**

FH cannot guarantee that a transfer request will be approved or how long it will take to process a VAWA emergency transfer request. FH will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit.

If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been

transferred. The tenant will be required to provide a good reason for refusing the unit and documentation supporting their good cause reason for refusing the unit. FH may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit. If FH has no safe and available units for which a tenant who needs an emergency is eligible, FH will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, FH will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

**Public Housing Transfer Hierarchy:**

Transfers made pursuant to VAWA are considered emergency transfers. Tenants in PHA's Public Housing program who request and are approved for a VAWA emergency transfer will be processed for the transfer in accordance with the PHA's hierarchy of transfers as established in PHA's ACOP 12.1.

**Multifamily/Affordable Housing Transfer Hierarchy:**

Transfers made pursuant to VAWA are considered emergency transfers. Tenants in FH's Affordable Housing program who request and are approved for a VAWA emergency transfer will be processed for the transfer in accordance with the FH's hierarchy of transfers as established in the affordable housing management plan Section 5.5.

**Housing Choice Voucher Program Issuance of Voucher:**

Participants in PHA's Housing Choice Voucher Program (HCV) who request and are approved for a VAWA related transfer will be processed for a transfer voucher in accordance with the PHA's emergency transfer policies as established in the PHA's Administrative Plan Chapter 13.2.5.

**HUD-VASH Voucher /Program:**

Participants in PHA's VASH Program who request and are approved for a VAWA related transfer will be processed for a transfer voucher in accordance with the PHA's emergency

transfer policies as established in the PHA's Administrative Plan Chapter 13.2.5.

**Continuum of Care Program (CoC):**

Participants in PHA's CoC Program who request and are approved for a VAWA related transfer will be processed for a transfer voucher in accordance with the PHA's emergency transfer policies as established in the PHA's Administrative Plan Chapter 17.23.

**HOME TBRA Program:**

Participants in PHA's HOME Tenant Based Rental Assistance Program who request and are approved for a VAWA related transfer will be processed within the HOME TBRA Program in accordance with the PHA's emergency transfer policies as established in the PHA's Administrative Plan Chapter 25.

**Family Unification Program including FUP-Y:**

Participants in PHA's Family Unification Program and Family Unification Program- Youth Programs who request and are approved for a VAWA related transfer will be processed within the in accordance with PHA's emergency transfer policies as established in the PHA's Administrative Plan Chapter 13.2.5.

**Project-Based Voucher Program (PBV):**

Participants in PHA's Project-Based Voucher Program who request and are approved for a VAWA related transfer will be processed for a transfer voucher in accordance with the PHA's emergency transfer policies as established in the PHA's Administrative Plan Chapter 22.

**Safety and Security of Tenants**

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe. Tenants who are or have been victims of domestic violence are encouraged to contact the **National Domestic Violence Hotline** at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-

800-787-3224 (TTY).

Tenants who have been victims of sexual assault may call the **Rape, Abuse & Incest National Network's National Sexual Assault Hotline** at 800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>.

Tenants who are or have been victims of stalking seeking help may visit the **National Center for Victims of Crime's Stalking Resource Center** at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

### **Confidentiality**

FH will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives FH written permission to release the information on a time limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights under the Violence against Women Act for All Tenants for more information about FH responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

**EXHIBIT 16-4: FORM HUD-5383 EMERGENCY TRANSFER REQUEST FOR  
CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL  
ASSAULT, OR STALKING,**

**EMERGENCY TRANSFER  
REQUEST FOR CERTAIN  
VICTIMS OF DOMESTIC  
VIOLENCE, DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING**

**U.S. Department of Housing  
and Urban Development**

OMB Approval No. 2577-0286  
Exp. 06/30/2017

**Purpose of Form:** If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

**The requirements you must meet are:**

**(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.

**(2) You expressly request the emergency transfer.** Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.

**(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

**OR**

**You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer.** If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

**Submission of Documentation:** If you have third-party documentation that demonstrates why

you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

**Confidentiality:** All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER**

**1. Name of victim requesting an emergency transfer:**

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**2. Your name (if different from victim's)**

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**3. Name(s) of other family member(s) listed on the lease:**

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**4. Name(s) of other family member(s) who would transfer with the victim:** \_\_\_\_\_

---

**5. Address of location from which the victim seeks to transfer:**

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**6. Address or phone number for contacting the victim:**

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**7. Name of the accused perpetrator (if known and can be safely disclosed):**

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**8. Relationship of the accused perpetrator to the victim:**

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**9. Date(s), Time(s) and location(s) of incident(s):**

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**10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11.** \_\_\_\_\_

**11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.**

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**12. If voluntarily provided, list any third-party documentation you are providing along with this notice:**

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This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_

## **EXHIBIT 16-5: VIOLENCE AGAINST WOMEN ACT (VAWA) POLICY**

### **VIOLENCE AGAINST WOMEN ACT (VAWA) POLICY**

- **PURPOSE AND APPLICABILITY**

The purpose of this policy is to implement the requirements of the Violence Against Women Reauthorization Act 2013 (VAWA) with respect to the responsibilities of the City and County Fresno Housing Authority (FH) regarding domestic violence, dating violence, sexual assault and stalking. This policy shall be applicable to all of the federally-subsidized housing programs administered by FH including Housing Choice Voucher Program (HCV), Project Based Voucher (PBV), Veteran's Affairs Supportive Housing (VASH), HOME Tenant Based Rental Assistance (TBRA), Family Unification Program (FUP), Family Unification Program-Youth (FUP-Y), and Continuum of Care (CoC) administered under FH's Assisted Housing Division (AHD), Low Income Public Housing (LIPH), HOME Investment Partnership (HOME), Multifamily Project Rental Assistance (PBRA), Multifamily Project Based Section 8 operated under the California Finance Housing Agency (CalHFA) programs [HUD Programs] are in compliance with VAWA. Properties operated solely or in conjunction with one or more of the above and/or regulated under the Low Income Housing Tax Credit, (LIHTC) Internal Revenue Code (IRC) Section 42 program (Affordable Housing Program), administered under the Housing Management Division (HMD) Protections under this policy are available to all victims regardless of sex, gender identity, or sexual orientation and will be applied consistent with all nondiscrimination and fair housing requirements.

- **GOALS AND OBJECTIVES**

- Maintaining compliance with all applicable legal requirements imposed by VAWA
- Ensuring the physical safety of victims of actual or threatened domestic violence, dating violence, sexual assault and stalking
- Providing and maintaining housing opportunities for victims of domestic violence, dating violence, sexual assault and stalking
- Creating and maintaining collaborative arrangements between FH, law enforcement authorities, victim service providers and others to promote the safety and well-being of victims of actual or threatened domestic violence, dating violence, sexual assault and stalking
- Taking appropriate action in response to an incident or incidents of domestic violence, dating violence, sexual assault and stalking affecting individuals assisted by FH programs.

### **III. DEFINITIONS**

- (1) Domestic Violence - includes felony or misdemeanor crimes of violence committed by a current or former spouse or

intimate partner of the victim, by a person with whom the victim shares a child, by a person who is living with or has lived with the victim as a **spouse or intimate partner**, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

(2) Spouse or Intimate Partner - includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

(3) Dating Violence - violence committed by a person

- a. who is or has been in a social relationship of a romantic or intimate nature with the victim and
- b. where the existence of such a relationship is determined by the following:
  - i. length of the relationship,
  - ii. the type of the relationship; and
  - iii. the frequency of interaction between the persons involved in the relationship.

(4) Sexual Assault - is any type of sexual contact or behavior that occurs without the explicit consent of the recipient, including when the individual lacks capacity to consent as prescribed by Federal, tribal, State or local laws.

(5) Stalking - engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's individual safety or the safety of others, or suffer substantial emotional distress

(6) Affiliated individual - with respect to an individual, means

- 3) a spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
- 4) any other person living in the household of that individual, including lawful occupant

(7) Perpetrator - a person who commits acts of domestic violence, dating violence, sexual assault, or stalking against a victim.

(8) VAWA Self Petitioner - refers to noncitizens who claim to be victims of "battery or extreme cruelty." Battery or extreme cruelty includes domestic violence, dating violence, sexual assault, and stalking. VAWA allows these noncitizens to self-petition for Lawful Permanent Resident (LPR) status without the cooperation of or knowledge of their abusive relative

(9) Actual and Imminent Threat – Words, gestures, actions, or other physical threats that

- a. is real,
- b. would occur within an immediate time frame, and
- c. could result in death or serious bodily harm [24 CFR 5.2005 (d) (2) and (e).

In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- 1. The duration of the risk,
- 2. The harm and severity of the potential harm,
- 3. The likelihood that the potential harm will occur, and
- 4. The length of time before the potential harm would occur [24 CFR 5.2005 (e)].

(10) Bifurcate – To divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered programs, affordable housing, and State or local laws. Divide lease to provide rights of victim and remove rights of the abuser regardless of head of household, spouse. HCV participants will work with the owner and/or Management Company of their housing unit to complete this process.

#### IV. NOTIFICATIONS PROVIDED

- 1. All applicants and tenant/participants of all FH Housing Programs will be provided HUD-5380, "Notification of Occupancy Rights Under the Violence Against Women Act (VAWA)" and HUD-5382, "Certification of Domestic Violence, Dating violence, Sexual Assault, or Stalking and Alternate Documents" at the following times:
  - 1. at time of denial of assistance or admission
  - 1. at time of providing of assistance or admission
  - 2. at recertification or lease renewal
  - 3. at any eviction or termination

4. These forms will be provided in the applicable language, if necessary, in accordance with Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency).

## V. ADMISSIONS AND SCREENING

(2) Non-Denial of Assistance - The FH will not deny assistance or admission to any person because that person is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, provided that such person is otherwise qualified for admission.

### (3) Mitigation of Disqualifying Information

- a. An applicant for assistance whose history includes incidents in which the applicant was a victim of domestic violence, may request that FH take such information into account in mitigation of potentially disqualifying information, such as poor credit history or previous damage to a dwelling.
- b. If requested by an applicant to take such mitigating information into account, FH shall be entitled to conduct such inquiries as are reasonably necessary to verify the claimed history of domestic violence and its probable relevance to the potentially disqualifying information.
- c. FH will not disregard or mitigate potentially disqualifying information if the applicant household includes a perpetrator of a previous incident or incidents of domestic violence.

## VI. TERMINATION OF TENANCY OR ASSISTANCE

### (1) VAWA Protections against Termination [24 CFR 5.2005 (c)]

- A tenant/participant may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if
  - a. the criminal activity is engaged in by a member of the household of the tenant/participant or any guest or other person under the control of the tenant/participant and
  - b. the tenant/participant or an affiliated individual of the tenant/participant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking
- An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be considered as a serious or repeated violation of the lease by the victim or threatened victim or good cause for terminating the

assistance, tenancy or occupancy rights of the victim or threatened victim of such incident.

## (2) Limitations of VAWA Protections

- A. Nothing in the above section limits the authority of the FH to comply with a court order with respect to the rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking, or the distribution or possession of property among members of a household.
- B. Nothing in the above section limits any available authority of the FH to evict or terminate assistance to a tenant/participant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking. However, the FH will not hold to a more demanding standard, a tenants/participants or an affiliated individual who is or has been a victim of or domestic violence, dating violence, sexual assault, or stalking
- C. Nothing in the above section limits the authority of the FH to evict or terminate from assistance any tenant/participant or lawful applicant if
  - FH can demonstrate an actual and imminent threat to other tenants/participants or to those employed at or providing service to the property, if the tenant/participant is not evicted or terminated from the assistance, and
  - no other actions that could be taken to reduce the threat have been successful, including transferring the victim to a different unit, barring the perpetrator from the property, involving law enforcement, or seeking other legal remedies to prevent the perpetrator from acting on a threat.

## VII. VERIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

A. Requirement for Verification. Subject only to waiver as provided in paragraph D below, the FH shall require verification in all cases where an individual requests protection against an action involving domestic violence, dating violence, sexual assault, or stalking.

B. Verification may be accomplished in one of three ways:

1. Completing HUD-5382, "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking"
2. Other documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the side effects of the abuse, described in such documentation. The professional providing the documentation must sign and attest under penalty of perjury that the incident or incidents in question are bona fide and meet the requirements of the applicable definition set forth in this policy.

3. Police or court record - provided to the FH by federal, state, tribal, or local police or court record describing the incident or incidents in question.
  - (4) Time Allowed. An individual who claims protection against adverse action based on an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking, and who is requested by the FH to provide verification, must provide such verification within 14 business days after receipt of the request for verification. Failure to provide verification, in proper form within such time will result in loss of protection under VAWA and this policy against a proposed adverse action.
  - (5) If the FH receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), the FH has the right to request that the tenant/participant provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. Failure to provide third-party documentation where there is conflicting evidence will result in loss of protection under VAWA and this policy against a proposed adverse action.
  - (6) Waiver of verification requirement. With respect to any specific case, the FH may waive the above-stated requirements for verification and provide the benefits of this policy based on the victim's statement or other corroborating evidence. Such waiver may be granted in the sole discretion of the Executive Director or President/CEO. Any such waiver must be in writing. Waiver in a particular instance or instances shall not operate as precedent for, or create any right to, waiver in any other case or cases, regardless of similarity in circumstances.

#### VIII.

#### NON-CITIZEN SELF-PETITIONER VERIFICATION

- A. Financial assistance to ineligible noncitizens will not be denied while verifying immigration status.
- B. Self-petitioners can indicate that they are in "satisfactory immigration status" when applying for assistance or continued assistance. "Satisfactory immigration status" means an immigration status which does not make the individual ineligible for financial assistance. After verifying such immigration status in the Department of Homeland Security (DHS) Systematic Alien Verification for Entitlements (SAVE) System, FHs will make a final determination as to the self-petitioner's eligibility for assistance.

C. In order to qualify, the noncitizen victim must have been battered or subjected to extreme cruelty by their spouse or parent, who is a U.S. citizen or LPR (Lawfully Permanent Resident).

D. Once a FH receives a self-petition (INS Form I-360 or I-130) or INS Form 797, FH will not request any additional information from the VAWA self-petitioner, other than what is required using the SAVE system to complete the verification.

E. When a FH receives a self-petition or INS Form 797 Notice of Action, the FH will initiate verification in the SAVE System

F. Final determination from the SAVE System. FH will receive one of two confirmations:

- I. the VAWA self-petition is verified, in which case the applicant is immediately eligible for housing and no evidence of battery or extreme cruelty shall be requested or collected;
- II. the I-130 is verified, in which case the petitioner submitting a family-based visa petition must provide to the FH any evidence of "battery or extreme cruelty."

G. Housing assistance and all other VAWA protections will be granted to the self-petitioner throughout the verification process until a final determination of LPR (Lawful Permanent Resident) status is made. If the final determination is to deny the VAWA self-petition or LPR petition, the FH must alert the petitioner and take actions to terminate voucher/rental assistance or evict the petitioner from public housing/affordable housing program (s) in accordance with the existing public/affordable or governing housing requirements.

## IX. EMERGENCY TRANSFER PLAN

### A. Eligibility for Transfer

In accordance with the Violence Against Women Act (VAWA) the FH allows tenants/participants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit and/or transfer of assistance in the case of Housing Choice Voucher participants, regardless of sex, gender identity, sexual orientation. The ability of the FH to honor such request for tenants/participants currently receiving assistance may depend upon on

- A. a preliminary determination that the tenant/participant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking,
- B. Type of housing program tenant/participant is currently receiving to determine the type of unit/assistance available and

- C. whether the FH has another dwelling unit and/or assistance that is available and is safe to offer the tenant/participant for temporary or more permanent occupancy.

B. Requesting a transfer

- To request an emergency transfer the tenant/participant shall notify the FH office located at the 1331 Fulton Mall Fresno CA 93721 for programs under the Housing Choice Voucher program, or local rental office for public housing and/or affordable housing programs, and submit a written request for a transfer (HUD-5383). The FH will provide reasonable accommodations to this policy for individuals with disabilities. The tenant/participants' written request for an emergency transfer should include either:
    - A statement expressing that the tenant/participant reasonably believes that there is a threat of imminent harm from further violence if the tenant/participant were to remain in the same dwelling unit assisted under one or more of the FH's program; or
    - A statement that the tenant/participant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant/participant's request for an emergency transfer.
1. For tenants/participants living in public housing or other affordable housing programs, FH cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. However, the FH will act as quickly as possible to move a tenant/participant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit.
  2. For Housing Choice participants, FH will work with the participant to transfer their assistance from one unit to another. FH cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. However, the FH will act as quickly as possible to move a tenant/participant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit
  3. If a tenant/participant reasonably believes a proposed transfer would not be safe, the tenant/participant may request a transfer to a different unit.
  4. If a unit is available, the transferred tenant/participant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. The FH may be unable to transfer a tenant/participant to a particular unit if the tenant cannot establish eligibility for that unit/program.
  5. In cases where the FH determines that the family's decision to move out of the FH housing was reasonable under the circumstances, the FH may wholly or partially waive rent payments and any rent owed shall be reduced by the amounts of rent collected for the remaining lease term from a tenant subsequently occupying the unit.
  6. Portability - An HCV-assisted tenant will not be denied portability to a unit located in another jurisdiction so long as the tenant has complied with all other requirements of

the Housing Choice Voucher program and has moved from the unit in order to protect the health or safety of an individual member of the household who is or has been the victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believes that the tenant or other household member will be imminently threatened by harm from further violence if the individual remains in the present dwelling unit.

7. If the FH has no safe and available units for which a tenant/participant who needs an emergency is eligible, the FH will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant/participant could move.
8. At the tenant/participant's request, the FH will also assist tenants/participant in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

### (3) Safety and Security of Tenants

- Confidentiality - The FH will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives the FH written permission to release the information on a time limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant.
- Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant/participant is urged to take all reasonable precautions to be safe.
- Tenants/participants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).
- Tenants/participants who have been victims of sexual assault may call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>.
- Tenants/participants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

### X. OTHER REMEDIES

- Lease Bifurcation
  - (d) the FH may bifurcate a lease; that is, remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to that member who engages in criminal activity related to of

domestic violence, dating violence, sexual assault, or stalking. In such a case, it does not matter that the perpetrator was a signatory to the lease and the victim is allowed to stay in the unit or on the program.

(1) In removing the perpetrator from the household, the FH will follow all federal, state and local eviction procedures.

(2) If the evicted person was the eligible person in the household, the remaining tenants will be given 90 days from the date of bifurcation of the lease to:

- a. establish eligibility for the program they are currently under
- b. establish eligibility under another program, or
- c. find alternative housing

A. Efforts to promote housing stability

The FH will make every effort that is feasible and permissible to assist victims to remain in their units or other units of the FH and/or retain assistance. The FH will bear the cost of any transfer, where permissible.

- Relationships with service providers

It is the policy of the FH to cooperate with organizations and entities, both private and governmental that provide shelter and/or services to victims of domestic violence. If the FH becomes aware that an individual assisted by the FH is a victim of domestic violence, dating violence, sexual assault or stalking, the FH will refer the victim to such providers of shelter or services as appropriate. Notwithstanding the foregoing, this Policy does not create any legal obligation requiring the FH either to maintain a relationship with any particular provider of shelter or services to victims of domestic violence or to make a referral in any particular case. The FH's annual Public Housing Agency Plan shall describe providers of shelter or services to victims of domestic violence with which the FH has referral or other cooperative relationships.

## Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines **domestic violence** to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse

- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines ***dating violence*** as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines ***stalking*** as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.

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<b>EXHIBIT 21-1: FH LANGUAGE ASSISTANCE PLAN</b>
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## **LANGUAGE ASSISTANCE PLAN**

### **1. INTRODUCTION AND PURPOSE**

Fresno Housing (FH) is committed to its obligations under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000(d) and executive Order 13166. These obligations include ensuring meaningful access to FH's programs and services to all eligible persons, including those who have limited English proficiency (LEP) because of their national origin. The term LEP refers to individuals who have a limited ability to read, write, or understand English well or at all. To ensure meaningful access, FH has analyzed its operations and the populations it serves, and has developed this Language Assistance Plan (LAP). This plan details the steps Fresno Housing has taken and will continue to take to satisfy its obligation to provide the greatest degree of meaningful access to its programs and services by persons who have limited English proficiency.

### **2. ANALYSIS OF NEED**

Based on 2015 American Community Survey 1-Year data estimates (ACS), 45% of Fresno County residents speak a language other than English, of which Spanish (77%) and Hmong (6%) are the most predominant and could be expected to participate in Fresno Housing services and programs. Among the Spanish or Spanish Creole speaking population of Fresno County, ACS data indicate that approximately 40% (123,846 people) speak English less than very well.

Among the Hmong speaking population, ACS data indicate that approximately 41% (9,977 people) speak English less than very well. FH has determined that a broad array of language assistance services should be provided in Spanish and Hmong.

### **3. FOUR FACTOR ANALYSIS**

As noted above, FH has determined that it serves a significant number of persons with limited English proficiency whose first language is either Spanish or Hmong. These persons can

be expected to come into contact with Fresno Housing on regular events, such as 1) application; 2) lease/ Move In; 3) recertification; 4) termination of benefits. Each of these events is vital to the provision and maintenance of housing resources, clearly an important service of FH. FH may have multilingual employees who are available to provide interpretation services, and has the resources to provide written translation of certain vital documents into both Spanish and Hmong.

#### 1. SPECIFICS OF LANGUAGE ASSISTANCE PROVIDED

##### 1. Written Translation

FH has determined that the following documents are vital to the operation of each of the programs listed below. These documents will be professionally translated and made available in both Spanish and Hmong.

##### 1. Conventional Low-Income Public Housing Program

Application

Lease

Lease termination including legal notices

##### 2. Multifamily Affordable Housing Program, i.e. Project Based Rental Assistance (PBRA)

Application

Lease

Lease termination including legal notices

##### 3. 2. Housing Choice Voucher Program

Application

Lease Termination

##### 4. Rural Development Farm Labor Housing

Application

Lease

## Grievance Procedure

### 5. ORAL TRANSLATION

FH staff members may be available to provide oral interpretation of everyday communications with persons who have limited English proficiency and whose first language is Spanish or Hmong. Additionally, FH has contracted with Language Line Services, a commercial interpretation service that offers oral interpretation in more than 150 languages, and is available during all business hours. FH has posted in relevant locations notices of availability of the Language Line Services – at no cost to the user – for business conducted with FH.

### 6. MONITORING AND UPDATE OF PLAN

All staff members expected to interact with the public have been provided with guidance on the protocol in the event any person needs language assistance under this plan. This guidance includes a “quick reference guide” for Language Line Services, as well as an identification of those staff members who are fluent in languages other than English.

FH will consider conducting a Customer Service Survey. The intent of the survey will be to help FH determine if the client’s needs for translating information and documents are being met. FH will reevaluate its language assistance plan on a yearly basis to determine if 1) the population of persons with limited English proficiency has changed such that the addition or exclusion of written translations in other languages is required; and 2) the language assistance provided continues to create meaningful access to FH’s services and programs.

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# GLOSSARY

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## **A. TERMS USED IN DETERMINING RENT**

### **ANNUAL INCOME (24 CFR 5.609)**

Annual income is the anticipated total income from all sources. This includes net income derived from assets, received by the family head and spouse (even if temporarily absent) and by each additional family member for the 12-month period following the effective date of initial determination or reexamination of income. It does not include income that is temporary, non-recurring, or sporadic as defined in this section, or income that is specifically excluded by other federal statute. Annual income includes:

The full amount before any payroll deductions, of wages and salaries, overtime pay, commissions fees, tips and bonuses, and other compensation for personal services.

The net income from operation of a business or profession, including any withdrawal of cash or assets from the operation of the business. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining the net income from a business. An allowance for the straight line depreciation of assets used in a business or profession may be deducted as provided in IRS regulations. Withdrawals of cash or assets will not be considered income when used to reimburse the family for cash or assets invested in the business.

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 the straight line depreciation of real or personal property is permitted. Withdrawals of cash or assets will not be considered income when used to reimburse the family for cash or assets invested in the property.

When 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.

The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.

*NOTE: Treatment of lump sum payments for delayed or deferred periodic payment of social security or SSI benefits is dealt with later in this section.*

Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation, and severance pay.

All welfare assistance payments received by or on behalf of any family member. (24 CFR 913.106(b)(6) contains rules applicable to "as-paid" States).

Periodic and determinable allowances, such as alimony and child care support

payments, and regular cash contributions or gifts received from persons not residing in the dwelling.

All regular pay, special pay and allowances of a member of the Armed Forces (except special pay to a family member serving the Armed Forces who is exposed to hostile fire).

#### **EXCLUSIONS FROM ANNUAL INCOME (24 CFR 5.609)**

Annual income does not include the following:

Income from the employment of children (including foster children) under the age of 18 years;

Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the resident family, who are unable to live alone);

Lump sum additions to family assets, such as inheritances, insurance payments (including payments under health, and accident insurance and workers' compensation) capital gains, and settlement for personal property losses;

Amounts received by the family that are specifically for, or in reimbursement of the cost of medical expenses for any family member.

Income of a live-in aide, provided the person meets the definition of a live-in aide.

The full amount of student financial assistance paid directly to the student or the educational institution.

The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

Amounts received under HUD funded training programs (e.g. Step-up program); excludes stipends, wages, transportation payments and child care vouchers for the duration of the training.

Amounts received by a person with disabilities that are disregarded for a limited time for purposes of Supplemental Security Income and benefits that are set aside for use under a Plan to Attain Self Sufficiency (PASS).

Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out of pocket expenses incurred for items such as special equipment, clothing, transportation and childcare, to allow participation in a specific program.

Amount received as a Resident services stipend. A modest amount (not to exceed \$200 per month) received by a public housing resident for performing a service for the PHA, on a part-time basis, that enhances the quality of life in public housing. Such services may include but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as the resident member of the PHA governing Board. No resident may receive more than one such stipend during the same period of time.

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 family members 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.

Temporary, non-recurring, or sporadic income (including gifts).

Reparation payments paid by foreign governments pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. (For all initial determinations and reexaminations of income on or after April 23, 1993.)

Earnings in excess of \$480 for each full-time student 18 years old or older, (excluding the head of household and spouse).

Adoption assistance payments in excess of \$480 per adopted child.

The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988 (42 U.S.C. 1437 et seq.), or any comparable Federal, State or local law during the exclusion period. For purposes of this paragraph the following definitions apply:

Comparable Federal, State or local law means a program providing employment training and supportive services that: (1) is authorized by a Federal, State or local law; (2) is funded by the Federal, State or local government; (3) is operated or administered by a public agency; and (4) has as its objective to assist participants in acquiring job skills.

Exclusion period means the period during which the resident participates in a program as described in this section plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937. If the resident is terminated from employment without good cause, the exclusion period shall end.

Earnings and benefits means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job.

Deferred periodic payments from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

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.

Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.

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 the United States Housing Act of 1937. (A notice will be published by HUD in the Federal Register identifying the benefits that qualify for this exclusion.

The following benefits are excluded by other Federal Statute as of August 3, 1933:

The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977;

Payments to volunteers under the Domestic Volunteer Service Act of 1973; examples of programs under this Act include but are not limited to:

The Retired Senior Volunteer Program (RSVP)

Foster Grandparent Program (FGP)

Senior Companion Program (SCP)

Older American Committee Service Program

National Volunteer Antipoverty Programs such as:

VISTA

Peace Corps

Service Learning Program

Special Volunteer Programs

Small Business Administration Programs such as:

National Volunteer Program to Assist Small Businesses

Service Corps of Retired Executives

Payments received under the Alaska Native Claims Settlement Act. [43 USC 1626 (a)]

Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes. [25 USC 459e]

Payments or allowances made under the Department of HHS' Low Income Home Energy Assistance Program. [42 USC 8624 (f)]

Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 USC 1552 (b))

Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94-540).

The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 USC. 1407-08), or from funds held in trust for an Indian Tribe by the Secretary of Interior.

Amounts of scholarships funded under Title IV of the Higher Education Act of 1965 including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs. [20 USC 1087 uu]  
Examples: Basic Educational Opportunity Grants (Pell Grants), Supplemental Opportunity Grants, State Student Incentive Grants, College-Work Study, and Byrd Scholarships.

Payments received under programs funded under Title V of the Older Americans Act of 1965 [42 USC 3056 (f)] Examples include Senior Community Services Employment Program, National Caucus Center on the Black Aged, National Urban League; Association National Pro Personas Mayores, National Council on Aging, American Association of Retired Persons, National Council on Senior Citizens, and Green Thumb.

Payments received after January 1, 1989 from the Agent Orange Settlement Fund or any other fund established in the In-Re Orange Product Liability litigation.

The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs of incurred in such care) under the Child Care and Development Block Grant Act of 1990. (42 USC 9858q)

Earned income tax credit refund payments received on or after January 1, 1991. (26 USC 32 )(j).

Living allowances under Americorps Program (Nelson Diaz Memo to George Latimer 11/15/94)

## **ADJUSTED INCOME**

Annual income, less allowable HUD deductions.

*Note: Under the Continuing Resolution, PHAs are permitted to adopt other adjustments to earned income for residents of Public Housing, but must absorb any resulting loss in rental income.*

All Families are eligible for the following:

Child Care Expenses: A deduction of amounts anticipated to be paid by the family for the care of children under 13 years of age for the period for which the Annual Income is computed. Child care expenses are only allowable when such care is necessary to enable a family member to be gainfully employed or to further his/her education. Amounts deducted must be unreimbursed expenses and shall not exceed: (1) The amount of income earned by the family member released to work, or (2) an amount determined to be reasonable by the PHA when the expense is incurred to permit education.

Dependent Deduction. An exemption of \$480 for each member of the family residing in

the household (other than the head or spouse, live-in aide, foster child) who is under eighteen years of age or who is eighteen years of age or older and disabled, or a full-time student.

Disabled Person Expenses. A deduction of unreimbursed amounts paid for attendant care or auxiliary apparatus expenses for disabled family members where such expenses are necessary to permit a family member(s), including the disabled member to be employed. In no event may the amount of the deduction exceed the employment income earned by the family member(s) freed to work.

Equipment and auxiliary apparatus may include but are not limited to: wheelchairs, lifts, reading devices for visually disabled, and equipment added to cars and vans to permit use by the disabled family member.

For non-elderly families and elderly families without medical expense: The amount of the deduction equals the cost of all unreimbursed expenses for disabled care and equipment less three percent of Annual Income, provided the amount so calculated does not exceed the employment income earned.

For elderly families with medical expenses: The amount of the deduction equals the cost of all unreimbursed expenses for disabled care and equipment less three percent of Annual Income, (provided the amount does not exceed earnings) plus medical expenses as defined below.

For Elderly and Disabled Families Only:

Medical Expenses: A deduction of unreimbursed medical expenses, including insurance premiums anticipated for the period for which Annual Income is computed. Medical expenses include, but are not limited to: services of physicians and other health care professionals, services of health care facilities; insurance premiums, including the cost of Medicare), prescription and non-prescription medicines, transportation to and from treatment, dental expenses, eyeglasses, hearing aids and batteries, attendant care (unrelated to employment of family members), expenses for service animals such as shots/vaccinations, license fees, and payments on accumulated medical bills. To be considered by the PHA for the purpose of determining a deduction from the income, the expenses claimed must be verifiable.

For elderly families without disabled person expenses: The amount of the deduction shall equal total medical expenses less 3% of annual income.

For elderly families with both disabled and medical expenses: The amount of disabled assistance is calculated first, then medical expenses are added.

Elderly/Disabled Household Exemption: An exemption of \$400 per household.

## **B. HOUSING TERMS**

**ACCESSIBLE DWELLING UNITS.** When used with respect to the design, construction or alteration of an individual dwelling unit, means that the unit is located on an accessible route,

and when designed, constructed, or altered, can be approached, entered, and used by individuals with a physical disability.

A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 24 CFR 8.32 & 40, (the Uniform Federal Accessibility Standards) is “accessible” within the meaning of this paragraph.

**ACCESSIBLE FACILITY.** All or any portion of a facility other than an individual dwelling unit used by individuals with physical disabilities.

**ACCESSIBLE ROUTE.** For persons with a mobility impairment, a continuous, unobstructed path that complies with space and reach requirements of the Uniform Federal Accessibility Standards (UFAC). For persons with hearing or vision impairments, the route need not comply with requirements specific to mobility.

**ADAPTABILITY.** Ability to change certain elements in a dwelling unit to accommodate the needs of disabled and non-disabled persons; or ability to meet the needs of persons with different types and degrees of disability.

**ADMISSION.** Admission to the program is the effective date of the lease. The point at which a family becomes a resident.

**ALLOCATION PLAN.** The plan submitted by the PHA and approved by HUD under which the PHA is permitted to designate a building, or portion of a building, for occupancy by Elderly Families or Disabled Families.

**ANNUAL INCOME AFTER ALLOWANCES.** The Annual Income (described above) less the HUD-approved allowances.

**APPLICANT** (or applicant family). A family that has applied for admission to a program, but is not yet a participant in the program.

**APPLICANT PORTAL.** The Applicant Portal has been established for persons who submit a pre-application with FH so that they may create an on-line account to review and update their personal information, including their current address, as well as indicate their continued interest in remaining on the interest list. FH’s method of communication with the applicant may be either by mail or electronic email, therefore, it is critical that applicants have a valid, current mailing address and email address at all times so that FH is able to make contact with the applicant when selected from the interest list.

**“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 and activities.

**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.

**COVERED FAMILIES.** The statutory term “covered families” designates the universe of families who are required to participate in a welfare agency economic self-sufficiency program and may, therefore, be the subject of a welfare benefit sanction for noncompliance with this obligation. “Covered families” means families who receive welfare assistance or other public assistance benefits from a State or other public 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 the assistance.

**DEPENDENT.** A member of the family household (excluding foster children) other than the family head or spouse, who is under 18 years of age or is a Disabled Person, or is a full-time student 18 years of age or older.

**DESIGNATED FAMILY.** The category of family for whom the PHA elects to designate a development (e.g. elderly family in a development designated for elderly families) in accordance with the 1992 housing Act. (24 CFR 945.105)

**DISABILITY ASSISTANCE EXPENSE.** Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and or 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.

**DISABILITY.** This term is used where “handicap” was formerly used.

**DISABLED FAMILY.** A family whose head, spouse, or sole member is a person with disabilities. A disabled family may include 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.**

**DISALLOWANCE.** Exclusion from annual income.

**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.

**DOMICILE.** The legal residence of the household head or spouse as determined in accordance with State and local law.

**DRUG-RELATED CRIMINAL ACTIVITY.** Term means:

Drug-trafficking; or

Illegal use, or possession for personal use of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

**DRUG TRAFFICKING.** The illegal manufacture, sale, distribution or the possession with intent to manufacture, sell, or distribute 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. Economic self-sufficiency programs can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare, financial or household management, apprenticeship, any other program necessary to ready a participant to work (such as: substance abuse or mental health treatment. Economic self-sufficiency program includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). See the definition of work activities at Sec. 5.603(c). The new definition of the term “economic self-sufficiency program” is used in the following regulatory provisions, pursuant to the Public Housing Reform Act: family income includes welfare benefits reduced because of family failure to comply with welfare agency requirements to participate in an economic self-sufficiency program; and the requirement for public housing residents to participate in an economic self-sufficiency program or other eligible activities.

**ELDERLY FAMILY.** A family whose head or spouse or whose sole member is at least 62 years, or two or more persons who are at least 62 years of age or a disabled person. It may include two or more elderly, disabled persons living together or one or more such persons living with one or more live-in aides.

**ELDERLY PERSON.** A person who is at least 62 years old.

**ELIGIBLE FAMILY (Family).** A family is defined by the PHA in the Admission and Continued Occupancy Plan.

**EXCEPTIONAL MEDICAL OR OTHER EXPENSES.** Prior to the regulation change in 1982, this meant medical and/or unusual expenses as defined in Part 889 which exceeded 25% of the Annual Income. It is no longer used.

**EXCESS MEDICAL EXPENSES.** Any medical expenses incurred by elderly families only in excess of 3% of Annual Income which are not reimbursable from any other source.

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

#### **FAMILY.**

- Two or more persons (with or without children) regularly living together, related by blood, marriage, adoption, guardianship or operation of law who will live together in PHA housing; OR
- two or more persons who are not so related, but are regularly living together, can verify shared income or resources who will live together in PHA housing.

The term family also includes the following terms defined in this section:

- Elderly family
- Disabled family

- Displaced person
- Single person
- Remaining member of a resident family,
- A foster care arrangement, or a kinship care arrangement

Other persons, including members temporarily absent (e.g. a child temporarily placed in foster care or a student temporarily away at college), may be considered a part of the applicant family's household if they are living or will live regularly with the family.

•Live-In Aides may also be considered part of the applicant family's household. However, live-in aides are not family members and have no right of tenancy or continued occupancy.

• Foster Care Arrangements include situations in which the family is caring for a foster adult, child or children in their home who have been placed there by a public child placement agency, or a foster adult or adults placed in the home by a public adult placement agency. For purposes of continued occupancy; the term family also includes the remaining member of a resident family with the capacity to execute a lease.

**FAMILY OF VETERAN OR SERVICE PERSON.** A family is a "family of veteran or serviceperson" when:

The veteran or serviceperson (a) is either the head of household or is related to the head of the household; or (b) is deceased and was related to the head of the household, and was a family member at the time of death.

The veteran or serviceperson, unless deceased, is living with the family or is only temporarily absent unless s/he was (a) formerly the head of the household and is permanently absent because of hospitalization, separation, or desertion, or is divorced; provided, the family contains one or more persons for whose support s/he is legally responsible and the spouse has not remarried; or (b) not the head of the household but is permanently hospitalized; provided, that s/he was a family member at the time of hospitalization and there remain in the family at least two related persons.

**FAMILY SELF-SUFFICIENCY PROGRAM (FSS PROGRAM).** The program established by a PHA to promote self-sufficiency of assisted families, including the provision of supportive services.

**FLAT RENT.** Rent for a public housing dwelling unit that is based on the market rent. The market rent is the rent charged for comparable units in the private, unassisted rental market at which the PHA could lease the public housing unit after preparation for occupancy. However, the flat rental amounts are to be set at no less than 80 percent of the HUD's fair market rent (FMR) for the PHA's jurisdiction.

**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.

**GUEST.** For the purposes of determining whether an individual's criminal activity is the responsibility of the resident, a guest is a person temporarily staying in the unit with the consent of a resident or other member of the household who has express or implied authority to so consent on behalf of the resident. The requirements of the lease apply to a guest as so defined.

**HEAD OF HOUSEHOLD.** The person who assumes legal and financial responsibility for the household and is listed on the application as head.

**HOUSING AGENCY.** A state, country, municipality or other governmental entity or public body authorized to administer the program. The term "PHA" includes an Indian housing authority (IHA). ("PHA" and "PHA" mean the same thing.). The Housing Authority is referred to as "HA" or "Housing Authority" throughout this document.

**HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974.** The Act in which the U.S. Housing Act of 1937 was recodified, and which added the Section 8 Programs.

**HOUSING ASSISTANCE PLAN.** A Housing Assistance Plan submitted by a local government participating in the Community Development Block Program as part of the block grant application, in accordance with the requirements of 570.303(c) submitted by a local government not participating in the Community Development Block Grant Program and approved by HUD. A Housing Assistance Plan meeting the requirements of 570.303(c) submitted by a local government not participating in the Community Development Block Grant Program and approved by HUD.

**HOUSING QUALITY STANDARDS (HQS).** The HUD minimum quality standards for housing assisted under the Public Housing and Section 8 programs.

**HUD.** The Department of Housing and Urban Development or its designee.

**HUD REQUIREMENTS.** HUD requirements for the Section 8 programs. HUD requirements are issued by HUD headquarters as regulations. Federal Register notices or other binding program directives.

**HURRA.** The Housing and Urban/Rural Recovery Act of 1983 legislation that resulted in most of the 1984 HUD Regulation changes to the definition of income, allowances, and rent calculations.

**IMPUTED ASSET.** Asset disposed of for less than Fair Market Value during two years preceding examination or reexamination.

**IMPUTED INCOME.** HUD passbook rate times the total cash value of assets, when assets exceed \$5,000.

**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. This amount is included in family annual income and, therefore, reflected in the family rental contribution based on this income.

**INCOME.** Income from all sources of each member of the household as determined in accordance with criteria established by HUD.

**INCOME-BASED RENT.** The resident rent paid to the PHA that is based on family income and the PHA rental policies. The PHA uses a percentage of family income or some other reasonable system to set income-based rents. The PHA has broad flexibility in deciding how to set income-based rent for its residents. However, the income-based resident rent plus the PHA's allowance for resident paid utilities may not exceed the "total resident payment" as determined by a statutory formula.

**INCOME FOR ELIGIBILITY.** Annual Income.

**INCOME TARGETING.** The HUD admissions requirement that PHAs not admit less than the number required by law of families have incomes at a greater of the Federal poverty level or 30 percent of area median income. In addition, the new ELI limits cannot exceed the Very Low-Income (VLI) limits; therefore, in some cases the ELI limits are identical to the VLI.

**INDIAN.** Any person recognized as an Indian or Alaska Native by an Indian Tribe, the federal government, or any State.

**INDIAN HOUSING AUTHORITY (IHA).** A housing agency established either by exercise of the power of self-government of an Indian Tribe, independent of State law, or by operation of State law providing specifically for housing authorities for Indians.

**INTEREST LIST.** A list of applicants wishing to participate in the random lottery/selection process.

**INTEREST REDUCTION SUBSIDIES.** The monthly payments or discounts made by HUD to reduce the debt service payments and, hence, rents required on Section 236 and 221 (d)(3) BMIR developments. Includes monthly interest reduction payments made to mortgagees of Section 236 developments and front-end loan discounts paid on BMIR developments.

**INVOLUNTARILY DISPLACED PERSON.** Involuntarily Displaced Applicants are applicants who meet the HUD definition for the local preference, formerly known as a federal preference.

**LANDLORD.** Refers to the HA, as either the legal owner of the property, or the owner's representative or managing agent as designated by the owner.

**LEASE.** A written agreement between an owner and an eligible family for the leasing of a housing unit.

**LIVE-IN AIDE.** A person who resides with an elderly person or disabled person and who:

- Is determined to be essential to the care and well-being of the person.

- Is not obligated for the support of the person.

- Would not be living in the unit except to provide necessary supportive services.

**LOCAL PREFERENCE.** A preference used by the PHA to select among applicant families without regard to their date and time of application.

**LOW-INCOME FAMILY.** This definition replaces a previous statutory reference. Generally, "low-income" designates a family whose income does not exceed 80 percent of area median income, with certain adjustments.

**MARKET RENT.** The rent HUD authorizes the owner of FHA insured/subsidized multi-family housing to collect from families ineligible for assistance. For unsubsidized units in an FHA-insured multi-family development in which a portion of the total units receive development-based rental assistance, under the Rental Supplement or Section 202/Section 8 Programs, the Market Rate Rent is that rent approved by HUD and is the Contract Rent for a Section 8 Certificate holder. For BMIR units, Market Rent varies by whether the development is a rental or cooperative.

**MEDICAL EXPENSES.** Those total medical expenses anticipated during the period for which Annual Income is computed, and which are not covered by insurance. (Only Elderly Families qualify) The allowances are applied when medical expenses exceed 3% of Annual Income.

**MINIMUM RENT.** An amount established by the PHA between zero and \$50.00.

**MINOR.** A member of the family household (excluding foster children) other than the family head or spouse who is under 18 years of age.

**MONTHLY ADJUSTED INCOME.** 1/12 of the Annual Income after Allowances.

**MONTHLY INCOME.** 1/12 of the Annual Income before allowances.

**NEAR-ELDERLY FAMILY.** A family whose head, spouse, or sole member is at least 50, but less than 62 years of age. The term includes two or more near-elderly persons living together and one or more such persons living with one or more live-in aides.

**NET FAMILY ASSETS.** The net cash value, after deducting reasonable costs that would be incurred in disposing of:

- Real property (land, houses, mobile homes)
- Savings (CDs, IRA or KEOGH accounts, checking and savings accounts, precious metals)
- Cash value of whole life insurance policies
- Stocks and bonds (mutual funds, corporate bonds, savings bonds)
- Other forms of capital investments (business equipment)

Net cash value is determined by subtracting the reasonable costs likely to be incurred in selling or disposing of an asset from the market value of the asset. Examples of such costs are: brokerage or legal fees, settlement costs for real property, or penalties for withdrawing saving funds before maturity.

Net Family assets also include the amount in excess of any consideration received for assets disposed of by an applicant or resident for less than fair market value during the two years preceding the date of the application or annual reexamination. This does not apply to assets transferred as the result of a foreclosure or bankruptcy sale.

In the case of disposition as part of a separation or divorce settlement, the disposition will not be considered to be less than fair market value if the applicant or resident receives important considerations not measurable in dollar terms.

**OCCUPANCY STANDARDS [Now referred to as Subsidy Standards].** Standards established by a PHA to determine the appropriate number of bedrooms for families of different sizes and compositions.

**PARTICIPANT.** A family that has been admitted to the PHA program, and is currently assisted in the program.

#### **PERSON WITH DISABILITIES**

1. A person who has a disability, as defined in 42 U. S. C. 423, and is determined, under HUD regulations, to have a physical, mental, or emotional 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.
2. A person who has a developmental disability as defined in 42 U.S.C. 6001.
3. An “individual with disabilities”, as defined in 24 CFR 8.3, for purposes of reasonable accommodation and program accessibility for persons with disabilities
4. Does not exclude persons who have AIDS or conditions arising from AIDS
5. Does not include a person whose disability is based solely on any drug or alcohol dependence (for low income housing eligibility purposes)

**PREMISES.** The building or complex in which the dwelling unit is located including common areas and grounds.

**PREVIOUSLY UNEMPLOYED.** Includes a person 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.

**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).** A state, county, municipality, or other governmental entity or public body authorized to administer the programs. The term “PHA” includes an Indian housing authority (IHA). (“PHA” and “IHA” mean the same thing.)

**QUALIFIED FAMILY.** A family residing in public housing whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment; or increased earnings by a family member during participation in any economic self-sufficiency or on the job training program; or new employment or increased earnings of a family member, during or within 6 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 PHA in consultation with the local CALWORKS agency and Welfare to Work programs. CALWORKS includes income and benefits & services such as one time payments, wage subsidies & transportation assistance, as long as the total amount over a 6-month period is at least \$500.

**QUALITY HOUSING AND WORK RESPONSIBILITY ACT OF 1998.** The Act which amended the U.S. Housing Act of 1937 and is known as the Public Housing Reform Bill. The Act is directed at revitalizing and improving HUD’s Public Housing and Section 8 assistance programs.

**RECERTIFICATION.** Sometimes called reexamination. The process of securing documentation of total family income used to determine the rent the resident will pay for the next 12 months if no interim changes are reported by the family.

**REMAINING MEMBER OF RESIDENT FAMILY.** Person left in assisted housing after other family members have left and become unassisted.

**RESIDENT** is used to refer to participants in terms of their relation as a lessee to the HA as the landlord.

**RESIDENCY PREFERENCE.** A local preference for admission of persons who reside in a specified geographic area.

**RESPONSIBLE ENTITY.** For the public housing, Section 8 resident-based assistance, development-based certificate assistance and moderate rehabilitation program, 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.

**SECURITY DEPOSIT.** A dollar amount which can be collected from the family by the owner upon termination of the lease and applied to unpaid rent, damages or other amounts owed to the owner under the lease according to State or local law.

**SERVICEPERSON.** A person in the active military or naval service (including the active reserve) of the United States.

**SINGLE PERSON.** A person living alone or intending to live alone who is not disabled, elderly, or displaced, or the remaining member of a resident family.

**SPECIFIED WELFARE BENEFIT REDUCTION.** Those reductions of welfare agency benefits (for a covered family) that may not result in a reduction of the family rental contribution. "Specified welfare benefit reduction" means 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.

**SPOUSE.** The marriage partner of the head of the household.

**SUBSIDIZED DEVELOPMENT.** A multi-family housing development (with the exception of a development owned by a cooperative housing mortgage corporation or association) which receives the benefit of subsidy in the form of:

Below-market interest rates pursuant to Section 221(d)(3) and (5) or interest reduction payments pursuant to Section 236 of the National Housing Act; or

Rent supplement payments under Section 101 of the Housing and Urban Development Act of 1965; or

Direct loans pursuant to Section 202 of the Housing Act of 1959; or

Payments under the Section 23 Housing Assistance Payments Program pursuant to

Section 23 of the United States Housing Act of 1937 prior to amendment by the Housing and Community Development Act of 1974;

Payments under the Section 8 Housing Assistance Payments Program pursuant to Section 8 of the United States Housing Act after amendment by the Housing and Community Development Act unless the development is owned by a Public Housing Agency;

A Public Housing Development.

**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.

**TENANT.** (Synonymous with resident) The person or persons who executes the lease as lessee of the dwelling unit.

**RESIDENT RENT.** The amount payable monthly by the family as rent to the PHA.

**TOTAL TENANT PAYMENT (TTP).** The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

**UNIT/HOUSING 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 bedrooms to six bedrooms.

**UTILITIES.** Utilities means water, electricity, gas, other heating, refrigeration, cooking fuels, trash collection and sewage services. Telephone service is not included as a utility.

**UTILITY ALLOWANCE.** The PHA's estimate of the average monthly utility bills for an energy-conscious household. If all utilities are included in the rent, there is no utility allowance. The utility allowance will vary by unit size and type of utilities.

**UTILITY REIMBURSEMENT PAYMENT.** The amount, if any, by which the Utility Allowance for the unit, if applicable, exceeds the Total Tenant Payment for the family occupying the unit.

**VERY LARGE LOWER-INCOME FAMILY.** Prior to the change in the 1982 regulations this meant a lower-income family which included eight or more minors. (Term no longer used)

**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.

**VETERAN.** A person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released therefrom under conditions other than dishonorable.

**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.

**WAITING LIST.** A list of families organized according to HUD regulations and PHA policy who are waiting for subsidy to become available.

**WELFARE ASSISTANCE.** Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, state, or local governments. “Welfare assistance” means income assistance from Federal or State welfare programs, and includes only cash maintenance payments designed to meet a family’s ongoing basic needs. The definition borrows from the Department of Health and Human Services’ CALWORKS definition of “assistance” and excludes nonrecurring short-term benefits designed to address individual crisis situations. For FSS purposes, the following do not constitute welfare assistance: Cal Fresh; emergency rental and utilities assistance; and SSI, SSDI, and Social Security.

DRAFT

### **C. TERMS USED IN THE NON-CITIZENS RULE**

**CHILD.** A member of the family other than the family head or spouse who is under 18 years of age.

**CITIZEN.** A citizen or national of the United States.

**EVIDENCE.** Evidence of citizenship or eligible immigration status means the documents which must be submitted to evidence citizenship or eligible immigration status.

**PHA.** A housing authority- either a public housing agency or an Indian housing authority or both.

**HEAD OF HOUSEHOLD.** The adult member of the family who is the head of the household for purpose of determining income eligibility and rent.

**HUD.** Department of Housing and Urban Development.

**INS.** The U.S. Immigration and Naturalization Service.

**MIXED FAMILY.** A family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status.

**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.

**NONCITIZEN.** A person who is neither a citizen nor nation of the United States.

**NONCITIZENS RULE.** Refers to the regulation effective June 19, 1995, restricting assistance to U.S. citizens and eligible immigrants.

**PHA.** A housing authority that operates Public Housing.

**RESPONSIBLE ENTITY.** The person or entity responsible for administering the restrictions on providing assistance to non-citizens with ineligible immigration status (the PHA).

**SECTION 214.** Section 214 restricts HUD from making financial assistance available for non-citizens unless they meet one of the categories of eligible immigration status specified in Section 214.

**SPOUSE.** Spouse refers to the marriage partner, either a husband or wife, who is someone you need to divorce in order to dissolve the relationship. It includes the partner in a common-law marriage. It does not cover boyfriends, girlfriends, significant others, or “co-heads.” “Co-head” is a term recognized by some HUD programs, but not by public and Indian housing programs.

#### **D. TERMS USED IN THE VIOLENCE AGAINST WOMEN ACT PROVISIONS**

**DOMESTIC VIOLENCE.** 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 cohabiting with or has cohabited 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..

**DATING VIOLENCE.** Violence committed by a person-

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship.

#### **STALKING.**

(A) (i) To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; and (ii) to place under surveillance with the intent to kill, injure, harass or intimidate another person; and

(B) in the course of, or as a result of, such following, pursuit, surveillance or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to-

(i) that person;

(ii) a member of the immediate family of that person; or

(iii) the spouse or intimate partner of that person.

**IMMEDIATE FAMILY MEMBER.** Means with respect to a person-

(A) a spouse, parent, brother, sister, or child of that person, or an individual to whom that person stands in loco parentis; or

(B) any other person living in the household of that person and related to that person by blood or marriage.

## **E. TERMS USED IN MIXED FINANCE DEVELOPMENTS**

**DEVELOPMENT.** Is a housing facility consisting of public housing units, and that may also consist of non-public housing units, that has been developed, or that will be developed, using mixed-finance strategies.

**MIXED-FINANCE.** Is the combined use of publicly and privately financed sources of funds for the development of public housing units.

**PUBLIC HOUSING UNIT.** A unit that is eligible to receive operating subsidy pursuant to section 9 of the Act (42 U.S.C.1437g).

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<sup>i</sup> 24 CFR 100.5