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- Identity Verification Report,
  - Income Discrepancy Report,
  - Debts Owed to PHAs & Termination Report, and Immigration Report

However, it should be noted that the information from these stand-alone reports are contained in the Income Report for each household. The YHA is **required** to address any and all potential issues at the time of the annual or interim re-exam, as conveyed in the Income Report.

The YHA may use the stand-alone reports to monitor staff's progress in reducing the following administrative and subsidy payment errors by using the listed reports:

- Incorrect/invalid SSNs/name/date of birth – Identity Verification Report
- Follow- up with families who need to disclose a SSN – Immigration Report
- Duplicate rental assistance – Multiple Subsidy Report
- Unreported increase in income – Income discrepancy Report
- Improper payments on behalf of deceased tenants – Deceased Tenants Report
- Unreported new employment (PHAs with interim increase policy) – New Hires Report
- Adverse Termination/Outstanding Debt to PHA – Debts Owed to PHAs & Termination Search

In order to ensure the YHA is aware of potential subsidy payment errors, the YHA is **required** to monitor the following EIV reports on a **monthly** basis:

- Deceased Tenants Report
- Identity Verification Report
- Immigration Report

In order to ensure the YHA is aware of potential subsidy payment errors, the YHA is **required** to monitor the following EIV reports on a quarterly basis:

- Income Discrepancy Report
- Multiple Subsidy Report
- New Hires Report (if YHA has an interim increase policy)

### **EIV Requirements for Recertification**

To minimize tenant underreporting of income, the YHA is required to obtain an EIV Income Report for each family any time the PHA conducts an annual or interim reexamination of family income and composition.

In accordance with 24 CFR §5.236(b)(2)(3), YHA is required to compare the information on the EIV report with the family-reported information. If the EIV report reveals an income source that was not reported by the tenant or a substantial difference in the reported income information, the YHA is required to take the following actions:

- Discuss the income discrepancy with the tenant

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- Request the tenant to provide any documentation to confirm or dispute the unreported or underreported income and/ or income sources;
  - In the event the tenant is unable to provide acceptable documentation to resolve the income discrepancy, the YHA is required to request from the third party source, any information necessary to resolve the income discrepancy
  - If applicable, determine the tenant's underpayment of rent as a result of unreported or underreported income, retroactively\*
  - Take any other appropriate action as directed by HUD or the YHA's administrative policies.

\* The YHA is required to determine the retroactive rent as far back as the existence of complete file documentation (form HUD-50058 and supporting documentation) to support such retroactive rent determinations.

*Note: A substantial difference is defined as an amount equal to or greater than \$2,400, annually.*

When there is an unsubstantial or no disparity between tenant-reported and EIV-reported income information, the YHA is required to obtain from the tenant, any necessary documentation to complete the income determination process. As noted previously, the YHA may reject any tenant-provided documentation, if the YHA deems the documentation unacceptable. The YHA may reject documentation provided by the tenant for only the following HUD-approved reasons:

- The document is not an original; or
- The original document has been altered, mutilated, or is not legible; or
- The document appears to be a forged document (i.e. does not appear to be authentic).

The YHA will explain to the tenant, the reason(s) the submitted documents are not acceptable and request the tenant to provide additional documentation. If at any time, the tenant is unable to provide acceptable documentation that the YHA deems necessary to complete the income determination process, the YHA is required to submit a traditional third party verification form to the third party source for completion and submission to the YHA.

If the third party source does not respond to the YHA's request for information, the YHA is required to document the tenant file of its attempt to obtain third party verification and that no response to the third party verification request was received.

The YHA should then pursue lower level verifications in accordance with the verification hierarchy.

### **Tenant Actions for YHA Underpayments of Rent**

#### YHA Policy

The tenant must be provided an opportunity to contest the YHA's determination of tenant rent underpayment. HUD regulations require the YHA to promptly notify tenants in writing of any adverse findings made on the basis of the information verified through the aforementioned income discrepancy resolution process. The tenant may contest the findings in accordance with the YHA's established grievance procedures, as required by HUD. The YHA may not terminate, deny, suspend, or reduce the family's assistance until the expiration

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of any notice or grievance period.

### **Tenant Repayment Agreement and Failure to Report Income**

Tenants are required to reimburse the YHA if they were charged less rent than required by HUD's rent formula due to the tenant's underreporting or failure to report income. The tenant is required to reimburse the YHA for the difference between the tenant rent that should have been paid and the tenant rent that was charged. This rent underpayment is commonly referred to as retroactive rent.

If the tenant refuses to enter into a repayment agreement or fails to make payments on an existing or new repayment agreement, the YHA **must** terminate the family's tenancy or assistance, or both. HUD does **not** authorize any YHA-sponsored amnesty or debt forgiveness programs, therefore, no amnesty or debt forgiveness program will be provided.

All repayment agreements must be in writing, dated, signed by both the tenant and the YHA, include the total retroactive rent amount owed, amount of lump sum payment made at time of execution, if applicable, and the monthly repayment amount. At a minimum, repayment agreements must contain the following provisions:

- Reference to the paragraphs in the Public Housing lease or Section 8 information packet whereby the tenant is in non-compliance and may be subject to termination of tenancy or assistance, or both.
- The monthly retroactive rent repayment amount is in addition to the family's regular rent contribution and is payable to the YHA.
- The terms of the agreement may be renegotiated if there is a decrease or increase in the family's income.
- Late and missed payments constitute default of the repayment agreement and may result in termination of tenancy and/or assistance.
- The YHA is required to determine retroactive rent amount as far back as they have documentation of family reported income. For example, if the YHA determines that the family has not reported income for a period of five years and only has documentation for the last three years, the YHA is only able determine retroactive rent for the three years for which documentation is available.

Repayments shall be in accordance with YHA's repayment policies and agreement.

### **EIV Record Retention**

#### YHA Policy

The YHA's record retention policy will determine the length of time the YHA should maintain EIV printouts in a tenant file. YHA is authorized to maintain the EIV Income Report in the tenant file for the duration of tenancy and no longer than three years from the end of participation (EOP) date. In accordance with revised regulation, 24 CFR §908.101, the YHA is required to maintain at a minimum, the last three years of the form HUD-50058, and supporting documentation for all annual and interim reexaminations of family income. All records are to be maintained for a period of at least three years from the effective date of the action.

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### **Disclosure of an Individual's EIV Information**

The Federal Privacy Act (5USC§552a, as amended) prohibits the disclosure of an individual's information to another person without the written consent of such individual. As such, the EIV data of an adult household member may not be shared (or a copy provided or displayed) with another adult household member, unless the individual has provided written consent to disclose such information.

However, the YHA is not prohibited from discussing with the head of household (HOH) and showing the HOH how the household's income and rent were determined based on the total family income reported and verified.

#### YHA Policy

EIV information and any other information obtained by the YHA for the purpose of determining eligibility and level of assistance for a PIH rental assistance program may not be disclosed to third parties for any reason (even for similar verifications under other programs, such as eligibility for low income housing tax credit units, other federal or state assistance programs), unless the tenant has authorized such disclosure in writing.

### **Incorrect EIV Information**

Sometimes the source or originator of EIV information may make an error when submitting or reporting information about tenants. HUD cannot correct data in the EIV system. Only the originator of the data can correct the information. When the originator corrects the data, HUD will obtain the updated information with its next computer matching process. Below are the procedures tenants and the YHA will follow regarding incorrect EIV information.

***Employment and wage information*** reported in EIV originates from the employer. The employer reports this information to the local State Workforce Agency (SWA), who in turn, reports the information to HHS' (Health and Human Services) National Directory of New Hires (NDNH) database.

If the tenant disputes this information, s/he should contact the employer directly, in writing to dispute the employment and/or wage information, and request that the employer correct erroneous information.

The tenant should provide the YHA with this written correspondence so that it may be maintained in the tenant file. If employer resolution is not possible, the tenant should contact the local SWA for assistance.

***Unemployment benefit information*** reported in EIV originates from the local SWA. If the tenant disputes this information, s/he should contact the SWA directly, in writing to dispute the unemployment benefit information, and request that the SWA correct erroneous information. The tenant should provide the YHA with this written correspondence so that it may be maintained in the tenant file.

***SS and SSI benefit information*** reported in EIV originates from the SSA. If the tenant disputes this information, s/he should contact the SSA at (800) 772-1213, or visit the local SSA office. SSA office information is available in the government pages of the local telephone directory or

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online at <http://www.socialsecurity.gov>.

**Note:** The tenant may also provide the YHA with third party documents which are in the tenant's possession to support their dispute of EIV information. The YHA, with the tenant's consent, is required to submit a third party verification form to third party sources for completion and submission to the YHA, when the tenant disputes EIV information and is unable to provide documentation to validate the disputed information. **The tenant's failure to sign the consent form is grounds for termination of tenancy and/or assistance in accordance with 24 CFR §5.232.**

**Debts owed to PHAs and termination information** reported in EIV originates from the PHA. If a current or former tenant disputes this information, s/he should contact the PHA (who reported the information) directly in writing to dispute this information and provide any documentation that supports the dispute. If the PHA determines that the disputed information is incorrect, the PHA will update or delete the record from EIV.

Former tenants may dispute debt and termination information for a period of up to three years from the end of participation date in the PIH program.

### **Identity Theft**

Seemingly incorrect information in EIV may be a sign of identity theft. Sometimes someone else may use an individual's SSN, either on purpose or by accident. SSA does not require an individual to report a lost or stolen SSN card, and reporting a lost or stolen SSN card to SSA will not prevent the misuse of an individual's SSN.

However, a person using an individual's SSN can get other personal information about that individual and apply for credit in that individual's name. So, if the tenant suspects someone is using his/her SSN, s/he should check their Social Security records to ensure their records are correct (call SSA at (800) 772-1213); file an identity theft complaint with the local police department and/or Federal Trade Commission (call FTC at (877) 438-4338, or visit their website at: <http://www.ftc.gov/bcp/edu/microsites/idtheft/>); and s/he should also monitor their credit reports with the three national credit reporting agencies (Equifax, TransUnion, and Experian). The tenant should provide the YHA written documentation of filed identity theft complaint. (Refer back to paragraph on Employment and wage information regarding disputed EIV information related to identity theft).

Tenants may request their credit report and place a fraud alert on their credit report with the three national credit reporting agencies at: [www.annualcreditreport.com](http://www.annualcreditreport.com) or by contacting the credit reporting agency directly. Each agency's contact information is listed below.

### **National Credit Reporting Agencies Contact Information**

Equifax Credit Information Services, Inc.

P.O. Box 740241 Atlanta, GA 30374

Website: [www.equifax.com](http://www.equifax.com)

Telephone: (800) 685-1111

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Experian

P.O. Box 2104 Allen, TX 75013

Website: [www.experian.com](http://www.experian.com)

Telephone (888) 397-3742

TransUnion

P.O. Box 6790 Fullerton, CA 92834

Website: [www.transunion.com](http://www.transunion.com)

Telephone: (800) 680-7289 or (800) 888-4213

### **Security of EIV Data**

The data in EIV contains personal information on individual tenants which is protected under the Federal Privacy Act. The information in EIV may only be used for limited official purposes, as noted below

#### **Official Purposes Include:**

- The YHA, in connection with the administration of PIH programs, for verifying the employment and income at the time of interim and annual reexaminations.
- HUD staff for monitoring and oversight of YHA compliance with HUD program requirements.
- Independent Auditors hired by the YHA or HUD to perform a financial audit for use in determining the YHA's compliance with HUD program requirements, including verifying income and determining the accuracy of the rent and subsidy calculations.

### **Restrictions on disclosure requirements for Independent Auditors**

#### **Independent Auditors:**

- May only access EIV income information within family files and only within the offices of the YHA or YHA- hired management agent;
- May not transmit or transport EIV income information in any form;
- May not enter EIV income information on any portable media;
- Must sign non-disclosure oaths that the EIV income information will be used only for the purpose of the audit; and
- May not duplicate EIV income information or re-disclose EIV income information to any user not authorized by Section 435(j)(7) of the Social Security Act to have access to the EIV income data.

#### **Official Purposes for Disclosure of EIV Do NOT Include:**

Sharing the information with governmental or private entities not involved in the reexamination process specifically used for PIH rental assistance programs.

Disclosing the EIV information to other private or public entities for purposes other than determining eligibility and level of assistance for PIH rental assistance programs is prohibited since these entities are not a party to the computer matching agreements with the HHS and SSA.

The fact that these entities may find the EIV beneficial for similar eligibility and determination purposes for other low- income housing programs or public benefits, does not permit these entities to use or view information in the EIV system that is covered by the computer matching agreements.

The computer matching agreements are governed by the Privacy Act and the Social Security Act. Specifically, sections 453(j)(7)(E)(ii) and (iv) of the Social Security Act (42 USC §653j) limit disclosure of the data matched between HUD and HHS' National Directory of New Hires (NDNH) database to PHAs, Independent Auditors, the Inspector General (IG) and Attorney General, private owners, management agents, and contract administrators of Multifamily Housing programs.

#### **Penalties for Willful Disclosure or Inspection of EIV Data**

- **Unauthorized Disclosure** – felony conviction and fine up to \$5,000 or imprisonment up to five (5) years, as well as civil damages.
- **Unauthorized Inspection** – misdemeanor penalty of up to \$1,000 and/or one (1) year imprisonment, as well as civil damages.

#### **Penalties for Noncompliance with Mandated EIV System Use**

The YHA may be subject to sanctions and/or the assessment of disallowed costs associated with any resulting incorrect subsidy or tenant rent calculation or both. HUD may impose a sanction on:

- The YHA if it does not have access to the EIV system or;
- The YHA has access to the system, however, has not used the system within the last six months.

To avoid sanctions or disallowed costs, the YHA will follow all formal and informal guidance provided to PHAs via webcast trainings, PIH Rental Housing Integrity Improvement Project (RHIIIP) periodic electronic mailings, and any other HUD Headquarters'-generated guidance.

#### **Updating of PHA Policies and Procedures**

##### YHA Policy

The YHA is required and has implemented all new and modified regulatory requirements of the *Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System-Amendments*.

#### **Notice to Applicants and Tenants**

HUD PIH 2010-19 and updates provide PHAs with the attached EIV system information guide

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that the YHA may provide to applicants and tenants of PIH rental assistance programs. The YHA is **not** required to distribute this document. However, the YHA will provide applicants and tenants with the ***What You Should Know About EIV Guide*** to educate families about EIV and inform them of how it affects their family.

There are two versions of the document: 1) with a signature block; and 2) without a signature block. It is not required for applicants or tenants to acknowledge receipt of the document; however, the YHA may, at their discretion, require the family to acknowledge receipt of the guide.

#### YHA Policy

YHA requires families to acknowledge receipt of the guide, provide the family with a copy of the guide to take with them, and maintain a signed copy in the family file folder.

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

#### **Reasonable Effort and Timing**

Unless third-party verification is not required as described below, HUD requires the YHA to make at least two unsuccessful attempts to obtain third-party verification before using another form of verification [VG, p. 15].

#### YHA Policy

The YHA will diligently seek third-party verification using a combination of written and oral requests to verification sources. Information received orally from third parties may be used either to clarify information provided in writing by the third party or as independent verification when written third-party verification is not received in a timely fashion.

The YHA may mail, fax, e-mail, or hand deliver third-party written verification requests and will accept third-party responses using any of these methods. The YHA will send a written request for verification to each required source within 5 business days of securing a family's authorization for the release of the information and give the source 10 business days to respond in writing. If a response has not been received by the 11<sup>th</sup> business day, the YHA will request third-party oral verification.

The YHA will make a minimum of two attempts, one of which may be oral, to obtain third-party verification. A record of each attempt to contact the third-party source (including no-answer calls) and all contacts with the source will be documented in the file. Regarding third-party oral verification, YHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

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

If a third party agrees to confirm in writing the information provided orally, the YHA will wait no more than 5 business days for the information to be provided. If the information

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is not provided by the 6<sup>th</sup> business day, the YHA will use any information provided orally in combination with reviewing family-provided documents.

### **When Third-Party Information is Late**

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

### **When Third-Party Verification is Not Required**

#### ***Primary Documents***

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

#### ***Certain Assets and Expenses***

The YHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

The YHA will determine that third-party verification is not available if the asset or expense involves an insignificant amount, making it not cost-effective or reasonable to obtain third-party verification.

#### **YHA Policy**

The YHA will use review of documents in lieu of requesting third-party verification when the market value of the total value of the asset is less than \$5,000 or an expense is less than \$500 annually *and* the family has original documents that support the declared amount. If the TVA is less than \$5,000, the family can self-certify- when allowed by the regulations.

#### ***Certain Income, Asset and Expense Sources***

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

#### **YHA Policy**

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

If the family cannot provide original documents, the YHA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

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The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost.

**7-I.E. REVIEW OF DOCUMENTS**

**Using Review of Documents as Verification**

YHA Policy

If the YHA has determined that third-party verification is not available or not required, the YHA will use documents provided by the family as verification.

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

**7-I.F. SELF-CERTIFICATION**

YHA Policy

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

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

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

**PART II. VERIFYING FAMILY INFORMATION**

**7.II.A. VERIFICATION OF LEGAL IDENTITY**

YHA Policy

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

<b>Verification of Legal Identity for Adults</b>	<b>Verification of Legal Identity for Children</b>
Certificate of birth, naturalization papers	Certificate of birth
Church issued baptismal certificate	Adoption papers
Current, valid driver's license or Department of Motor Vehicles identification card	Custody agreement
U.S. military discharge (DD 214)	Health and Human Services ID
	School records

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Current U.S. passport	
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If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided and at the YHA's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to the YHA and be signed in the presence of a YHA representative or YHA notary public.

Legal identity will be verified on an as needed basis.

**7.II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and PIH 2010-3 and PIH 2012-10]**

For every eligible family member, the family must provide documentation of a valid social security number (SSN). A self-certification stating that no SSN has been issued for a person that is not declaring eligibility of that member is acceptable only for those members of a mixed-family that do not declare eligibility. The self-certification must be executed personally by any family member 18 or older, or by a parent or guardian for a minor.

The YHA must request the applicant and participant (including each member of the household), who are not exempt, to provide documentation of each disclosed SSN. Acceptable evidence of the SSN consists of:

- a. An original SSN card issued by SSA;
- b. An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

It should be noted that most (if not all) individuals who are lawfully present in the U.S. have been assigned a SSN. Many existing laws require the disclosure of the SSN for various purposes. All applicants and participants, including each member of the household, with the exception of those exempt individuals, are required to disclose his/her assigned SSN.

The SSA issues three types of Social Security cards depending on an individual's citizen or noncitizen status and whether or not a noncitizen is authorized by the Department of Homeland Security (DHS) to work in the United States. They include:

1. The first type of card shows the individual's name and SSN only. This is the card most people have and reflects the fact that the holder can work in the U.S. without restriction. SSA issues this card to:
  - U.S. citizens; or

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- Noncitizens lawfully admitted to the United States for permanent residence and noncitizens with DHS permission to work permanently in the United States (i.e. refugees and asylees).
2. The second type of card bears, in addition to the individual's name and SSN, the legend: "**NOT VALID FOR EMPLOYMENT**". SSA issues this card to lawful noncitizens who do not have DHS permission to work, but are required by law to provide a SSN to obtain general assistance benefits that they already have qualified for.
  3. The third type of card bears, in addition to the individual's name and SSN, the legend "**VALID FOR WORK ONLY WITH DHS AUTHORIZATION**". SSA issues this card to people with DHS permission to work temporarily in the United States.

SSA verifies all noncitizens' documents with DHS before a SSN card is issued to a noncitizen.

### **Rejection of Documentation:**

The YHA may reject documentation of the SSN provided by the applicant or participant for only the following reasons:

- The document is not an original document; or
- The original document has been altered, mutilated, or not legible; or
- The document appears to be a forged document (i.e. does not appear to be authentic).

The YHA should explain to the applicant or participant, the reason(s) the document is not acceptable and request the individual to obtain acceptable documentation of the SSN and submit it to the YHA within a specified time frame.

### **Retention of Verification of the SSN**

The YHA shall verify each disclosed SSN by:

- a. Obtaining the documentation listed from applicants and participants (including each member of the household);
- b. Making a copy of the original documentation submitted, returning it to the individual, and retaining the copy in the file folder; and
- c. Recording the SSN on line 3n of the form HUD-50058, and transmitting the form HUD-50058 to HUD within a timely manner. YHA will transmit the form HUD-50058 within 30 calendar days of completing the form, to enable HUD to initiate its computer matching efforts. *Note: not applicable to applicants.*

If the family reports an SSN but cannot provide acceptable documentation of the number, the YHA will require a self-certification stating that documentation of the SSN cannot be provided at

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this time. The YHA will require documentation of the SSN within 60 calendar days from the date of the family member's self-certification mentioned above. If the family is an applicant, assistance cannot be provided until proper documentation of the SSN is provided.

YHA Policy

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

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

Social Security Numbers must be verified only once during continuously-assisted occupancy. If any family member obtains an SSN after admission to the program, the new SSN must be disclosed at the next regularly scheduled reexamination. If required by the law enforcement entity for the purpose of conducting criminal background verification, the social security numbers of household members, such as live-in aids, must be verified for the purpose of conducting criminal background checks.

**7-II.C. DOCUMENTATION OF AGE**

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

YHA Policy

If an official record of birth, the YHA 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/or to provide a self-certification.

Age must be verified only once during continuously-assisted occupancy.

**7-II.D. FAMILY RELATIONSHIPS**

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

YHA Policy

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

**Marriage**

YHA Policy

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

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

### **Separation or Divorce**

#### YHA Policy

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

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

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

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

### **Absence of Adult Member**

#### YHA Policy

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

### **Foster Children and Foster Adults**

#### YHA Policy

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

## **7-III.E. VERIFICATION OF STUDENT STATUS**

#### YHA Policy

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

The family claims full-time student status for an adult other than the head, spouse, or co-head, or

The family claims a child care deduction to enable a family member to further his or her education.

The family claims an income exclusion because the student is receiving earned income and only the first \$480 is included as income.

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## **7-II.F. DOCUMENTATION OF DISABILITY**

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

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

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

### **Family Members Receiving SSA Disability Benefits**

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

#### **YHA Policy**

For family members claiming disability who receive disability benefits from the SSA, the YHA will attempt to obtain information about disability benefits through the HUD EIV system. If documentation from HUD's EIV System is not available, the YHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), the YHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant or participant receives the benefit verification letter they will be required to provide it to the YHA.

### **Family Members Not Receiving SSA Disability Benefits**

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.603.

#### **YHA Policy**

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

## **7-II.F. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]**

### **Overview**

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons.

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

### **U.S. Citizens and Nationals**

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors (HUD-214).

The YHA requests verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

### **YHA Policy**

Family members who claim U.S. citizenship or national status will be required to provide additional documentation such as a birth certificate.

### **Eligible Immigrants**

#### ***Documents Required***

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

The documentation required for eligible non-citizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance.

### **YHA Verification**

For family members age 62 or older who claim to be eligible immigrants, proof of age is required.

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

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

**7-II.H. VERIFICATION OF PREFERENCE STATUS**

Any preferences must be properly verified.

**PART III. VERIFYING INCOME AND ASSETS**

Any assets and income reported by the family must be verified. This part provides YHA policies that supplement the general verification procedures specified in Part I of this chapter.

**7-III.A. EARNED INCOME**

YHA Policy

When paystubs or employer print-outs are used to verify earnings, two (2) current consecutive current paystubs will be required to calculate annual income from earnings. This method will be used regardless of frequency (i.e. weekly, bi-weekly, semi-monthly, monthly). Income will be annualized using these paystubs or employer records. Exceptions to this method will be documented in the tenant file.

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.

In states that the employer must bring the staff using tips as income, the YHA will use the projected numbers worked times the minimum wage for the area for the estimated annual income- when reported tips would not bring the individual to at least the minimum wage.

Interruption of employment due to temporary leave of absence (i.e. maternity leave, short-term disability): upon verification that earnings have stopped, an interim will be conducted to remove the income. The family may be required to complete a Zero/Extremely Low Income Questionnaire/Certification. The family is required to report any other income received in lieu of earnings. The family will be required to report when the income starts again. At that time an interim will be conducted to add the income back into the family budget.

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

YHA Policy

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

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

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

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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.

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

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

If a family member has been self-employed less than three (3) months, the YHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months the YHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

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

#### **Social Security/SSI Benefits**

##### **YHA Policy**

To verify the SS/SSI benefits of applicants, the YHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), the YHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant has received the benefit verification letter they will be required to provide it to the YHA.

To verify the SS/SSI benefits of participants, the YHA will obtain information about social security/SSI benefits through the HUD EIV System. If benefit information is not available in HUD systems, the YHA will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) the YHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the participant has received the benefit verification letter they will be required to provide it to the YHA.

### **7-III.D. ALIMONY OR CHILD SUPPORT**

##### **YHA Policy**

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

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

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

Verification of Child Support payments may be obtained electronically from the Child Support enforcement web site. The YHA must have the participants case number and along with entering the case number the last four digits of the participants Social Security number must be entered.

Third-party verification from the person paying the support

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

Copy of the latest check and/or payment stubs

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

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

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

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

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

### **7-III.E. ASSETS AND INCOME FROM ASSETS**

#### **Assets Disposed of for Less than Fair Market Value**

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. The YHA needs to verify only those certifications that warrant documentation.

#### **YHA Policy**

The YHA will verify the value of assets disposed of only if:

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

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

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

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

### **7-III.F. NET INCOME FROM RENTAL PROPERTY**

#### **YHA Policy**

The family must provide:

A current executed lease for the property that shows the rental amount or certification from the current tenant

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

### **7-III.G. RETIREMENT ACCOUNTS**

#### **YHA Policy**

When third-party verification is not available the type of original document that will be accepted depends upon the family member's retirement status.

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

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

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

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**7-III.H. INCOME FROM EXCLUDED SOURCES (PIH 2013-4)**

Income that is fully excluded means the entire amount qualifies to be excluded from the annual income determination. For fully excluded income, the YHA is **not required** to:

- Verify the income in accordance with the HUD-prescribed verification hierarchy;
- Document in the tenant file why third party verification was not available as required by 24 CFR 960.259(c)(i) and 24 CFR 982.516(a)(2); and
- Report the income in Section 7 of the form HUD-50058.

YHA may accept an applicant or participant's self-certification as verification of fully excluded income. The YHA's application and reexamination documentation, which is signed by all adult family members, may serve as the self-certification of the fully excluded income. YHA has the option of elevating the verification requirements if necessary, to determine if a source of income qualifies for a full exclusion.

Examples of common fully excluded income categories that are verifiable through applicant or participant self-certification are:

- Supplemental Nutrition Assistance Program (SNAP) benefits, formerly known as food stamps.
- Income from a live-in aide.

For a complete list of income exclusions, see 24 CFR 5.609(c).

Income that is partially excluded means that only a certain portion of the income reported by the family qualifies to be excluded, while the remainder must be included when determining the family's annual income. For partially excluded income,

YHA is required to:

- Comply with HUD-prescribed verification requirements and all applicable regulations pertaining to the determination of annual income; and
- Report the income in Section 7 of the form HUD-50058.

Examples of partially excluded income that are subject to regular verification requirements include:

- The Department of Veterans Affairs "Aid and Attendance" benefits – in accordance with 24 CFR 5.609(c)(4), these benefits may be excluded from income if they are used "specifically for, or in reimbursement of, the cost of medical expenses for any family member." Live-in or periodic medical assistance and services of doctors and health care professionals are among the services that may be counted as medical expenses. The YHA must verify the amount provided for aid and attendance medical expenses and the amount actually being used by the veteran for such expenses. Any portion of the benefit not used for such expenses would continue to be counted as income by the YHA when determining the family's annual income.
- Earnings in excess of \$480 for full-time students 18 years old or older (24 CFR 5.609(c)(11) – in order to determine the amount of earnings to include in the

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calculation of the family's annual income, the YHA must verify the amount of employment income for these family members.

YHA Policy

The YHA will not verify nor report fully excluded income. The YHA will verify and report partially included/excluded income.

**7-III.I. ZERO/EXTREMELY LOW ANNUAL INCOME STATUS**

Families claiming to have no or extremely low annual income will be required to execute verification forms and YHA executes an EIV search to determine that certain forms of income such as unemployment benefits, TANF, SSI, etc. are not being received by the household.

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

**7-III.J. STUDENT FINANCIAL ASSISTANCE (PIH 2015-21)**

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

For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student financial assistance is excluded from annual income [24 CFR 5.609(c)(6)]. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education (as defined in Exhibit 3-2). Excluded amounts are verified only if, without verification, the YHA would not be able to determine whether or to what extent the income is to be excluded (see section 7-III.H).

YHA Policy

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

In addition, the YHA will request written verification of the student's tuition amount.

If the YHA is unable to obtain third-party written verification of the requested information, the YHA will pursue other forms of verification following the verification hierarchy in section 7-I.B.

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

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents in accordance with YHA policy [24 CFR 5.612 and FR 4/10/06, p. 18146].

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

**YHA Policy**

If the YHA is required to determine the income eligibility of a student's parents, the YHA will request an income declaration and certification of income from the appropriate parent(s) (as determined in section 3-II.E). The YHA will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to the YHA. The required information must be submitted (postmarked) within 10 business days of the date of the YHA's request or within any extended timeframe approved by the YHA.

The YHA reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

**PART IV. VERIFYING MANDATORY DEDUCTIONS**

**7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS**

The dependent and elderly/disabled family deductions require only that the YHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

**Dependent Deduction**

See Chapter 6 for a full discussion of this deduction. The YHA will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or co-head of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

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### **Elderly/Disabled Family Deduction**

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 for a discussion of the deduction. The YHA will verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

### **7-IV.B. MEDICAL EXPENSE DEDUCTION**

Policies related to medical expenses are found in chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I.

#### **Amount of Expense**

##### YHA Policy

The YHA will provide a third-party verification form directly to the medical provider requesting the needed information.

Medical expenses will be verified through:

- EIV;
- Third-party verification form signed by the provider, when possible;
- If third-party is not possible, copies of cancelled checks used to make medical expense payments and/or printouts or receipts from the source will be used. In this case the YHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The YHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months;
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, the YHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

#### **Eligible Household**

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62, or a person with disabilities. The YHA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility Chapter.

#### **Qualified Expenses**

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 for the YHA's policy on what counts as a medical expense.

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### **Unreimbursed Expenses**

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

#### YHA Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

### **Expenses Incurred in Past Years**

#### YHA Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, the YHA will verify:

- The anticipated repayment schedule;
- The amounts paid in the past, and
- Whether the amounts to be repaid have been deducted from the family's annual income in past years.

### **7-III.C. DISABILITY ASSISTANCE EXPENSES**

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

#### **Amount of Expense**

##### *Attendant Care*

#### YHA Policy

The YHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

- Third-party verification form signed by the provider, when possible;
- If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source;
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

##### *Auxiliary Apparatus*

#### YHA Policy

Expenses for auxiliary apparatus will be verified through:

- Third-party verification of anticipated purchase costs of auxiliary apparatus;

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- If third-party is not possible, billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months;
  - If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, the YHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described above).
- The expense permits a family member, or members, to work.
- The expense is not reimbursed from another source.
- The expense does not exceed the amount of the earned income of the individual freed for work.

### **Family Member is a Person with Disabilities**

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The YHA will verify that the expense is incurred for a person with disabilities.

### **Family Member(s) Permitted to Work**

The YHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

### YHA Policy

The YHA will seek third-party verification from a Rehabilitation Agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.).

If third-party and document review verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

### **Unreimbursed Expenses**

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

### YHA Policy

An attendant care provider will be asked to certify that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

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**7-III.D. CHILD CARE EXPENSES**

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, the YHA must verify that:

- The child is eligible for care.
- The costs claimed are not reimbursed.
- The costs enable a family member to pursue an eligible activity.
- The costs are for an allowable type of child care.
- The costs are reasonable if seeking employment or furthering education.

**Eligible Child**

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. The YHA will verify that the child being cared for (including foster children) is under the age of 13.

**Unreimbursed Expense**

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

YHA Policy

The child care provider will be asked to certify that, to the best of the provider's knowledge, the child care expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

**Pursuing an Eligible Activity**

The YHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

YHA Policy

*Information to be Gathered*

The YHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

*Seeking Work*

Whenever possible the YHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the YHA will request verification from the agency of the member's job seeking efforts to

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date and require the family to submit to the YHA any reports provided to the other agency.

In the event third-party verification is not available, the YHA will provide the family with a form on which the family member must record job search efforts. The YHA will review this information at each subsequent reexamination for which this deduction is claimed.

*Furthering Education*

The YHA will ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered.

*Gainful Employment*

The YHA will seek verification from the employer of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified.

**Allowable Type of Child Care**

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

YHA Policy

The YHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6.

The YHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The YHA will verify the child care provider is not a family member residing in the household. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

**Reasonableness of Expenses**

Only reasonable child care costs can be deducted for seeking employment or furthering education.

YHA Policy

The actual costs the family incurs will be compared with the YHA's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable. YHA will use local welfare agency guidelines.

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If the family presents a justification for costs that exceed typical costs in the area, the YHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

The YHA shall use the local HHS determinations as the limit on what is reasonable for the area.

**Additional Provisions for Verification if Child Care Provided by Non-Agency Provider**

In cases where verification is provided through non-agency providers through an self-affidavits, and if the child care deduction exceeds \$600, the YHA will require the participant/tenant to provide verification of the 1099-Misc provided to the individual providing the care, and a copy of the provider's tax return indicating the income was properly documented for taxing purposes.

## **Chapter 8**

### **HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS**

[24 CFR 982 Subpart I and 24 CFR 982.507]

#### **INTRODUCTION**

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

All units must pass an HQS inspection prior to the approval of a lease and at least once every 24 months during the term of the contract, and at other times as needed, to determine that the unit meets HQS. Effective July 1, 2014, YHA may establish a policy for performing unit inspections biennially rather than annually. This policy could apply to some or all assisted units. YHA still has the option to inspect every unit annually. See Section 8-II.G for further details.

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

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

Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part II. The Inspection Process. This part describes the types of inspections the YHA will make and the steps that will be taken when units do not meet HQS.

Part III. Rent Reasonableness Determinations. This part discusses the policies the YHA will use to make rent reasonableness determinations.

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

#### **PART I: PHYSICAL STANDARDS**

##### **8.I.A. GENERAL HUD REQUIREMENTS**

###### **HUD Performance and Acceptability Standards**

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

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

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

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 and Inspection Checklist, form HUD-52580-A or Handheld Units;
- HUD PIH Notice 2010-26, Non-discrimination and Accessibility for Persons with Disabilities; and
- HUD Notice 2003-31, HUD Notice 2006-13, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

### **Tenant Preference Items**

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

### **Modifications to Provide Accessibility**

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore

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the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained. [24 CFR 100.203; Notice 2003-31, PIH 2006-13].

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

#### YHA Policy

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

### **8.I.B. ADDITIONAL LOCAL REQUIREMENTS**

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

#### **These additional requirements are approved by the HA Board of Commissioners:**

1. All mobile homes must be underpinned.
2. The YHA may fail unsanitary units where food, garbage, excrement, etc. exists to a degree where health can be damaged. They may also fail units where papers, clothes and trash are piled high and cause fire/health hazard. These will be considered tenant violations. In cases where a unit is determined to be roach free when tenant moves in, the appearance of roaches subsequently may be the responsibility of the tenant if they are the cause of the infestation. They will be held responsible for exterminating the unit. This does not prohibit the tenant and owner from working out their own solution to this problem, however.
3. All units must have a means of heat provided by the Owner. If the tenant desires to use their own heater, the tenant must state in writing that they are using their own heater by choice. The owner is then responsible for having the chimney checked and verified to be working properly. If an owner provides an adequate means of heat and the tenant prefers to use their own, the tenant is responsible for the heater connection and verifying the chimney to be adequate and safe. This does not prohibit the tenant and owner from working out their own solution to the matter (in agreement to both).
4. All motor vehicles on the premises must have current state registration, inspection sticker or license plate. Vehicles must be operable and not parked upon the lawn, sidewalk, or other areas not designated for parking. No abandoned or derelict vehicles

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5. All units must have a screen on at least one window located in all rooms used for family living unless they are closed off and not used.

### **Thermal Environment [HCV GB p.10-7]**

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

#### YHA Policy

The heating system must be capable of maintaining an interior temperature of 68 degrees Fahrenheit between October 1 and April 30, and all heating systems will be inspected and operated between these dates. From May 1 through September 30, the heating system will be inspected, but may not necessarily be operated, due to outside and inside temperatures. In those cases where the heating system is run by a boiler (normally October through May), they will not be operated if shut down. Also, central HVAC systems that include an AC chiller unit will not be operated in the “heat” mode if outside air temperatures are above 70 degrees Fahrenheit (to avoid damage to the system). Other heating systems that are single source such as gas, kerosene, oil, wood or pellet stoves and others will be inspected

### **Clarifications of HUD Requirements**

#### YHA Policy

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

#### ***Walls***

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

Areas which fall under the minimum lead base requirement, must secure the area of peeling paint, paint area with at least one coat of lead free paint and sign a “self-declaration” certifying it is properly lead-base paint abated.

Areas that have holes must be filled and finished

#### ***Windows***

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

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

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

Units without central heating and air conditioning must have a screen on each window per room.

Units with central heating and air conditioning must have a screen on at least one window of each room. Screens must be in good condition with no holes or tears.

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If screens have been on the window and are missing at inspection, they must be replaced.

All windows six (6) feet from ground level and under, (1<sup>st</sup> floor) must have locks.

All windows must be free of cracks that exceed two (2) inches or broken panes.

All windows must open, close and lock properly if designed to.

All windows in a sleeping area or bedroom must be free of permanently attached security bars without a quick release located inside the unit.

### ***Doors***

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

All interior doors must have no holes that penetrate through both sides, have all trim intact, and be openable without the use of a key.

All entry doors and rear exit doors must be sturdy (no interior type) and must have at least one keyed entry door so they can be locked from the outside.

### ***Floors***

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

All floors must be free of tears, missing tiles, torn linoleum or tripping hazards.

All carpet must be in good repair, with no major stains.

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

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

### ***Sinks***

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

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

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***Security***

Owners and/or tenants are responsible for providing and replacing old batteries for battery powered smoke detector units. Tenant will be instructed not to tamper with smoke detectors or remove batteries. If battery is weak in the smoke or CO detector, the inspector may replace with a new batter. If smoke detector or carbon monoxide detector is found to be defective at the time of inspection, this will need to be corrected within twenty four (24) hours or the contract will be terminated.

All families with hearing impaired members must have a smoke detector installed by the owner with flashing lights in the bedroom or sleeping area. If the unit has a source of carbon monoxide (CO), a hearing impaired detector with flashing lights must be installed. A combination smoke/CO detector with flashing lights may be installed outside of the bedroom as long as a hearing impaired smoke detector is installed in the bedroom or sleeping area.

All units above the ground level, without emergency exits other than a window which is eight (8) feet above the ground must have a ladder or rope ladder. If the unit has a balcony, the ladder or rope ladder is not required but the Housing Department highly recommends having either a ladder or rope ladder for safety

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

A simple “bolt lock” on exterior doors may be used along with a regular key lock. **Double cylinder deadbolt locks are NOT allowed.**

***Water Heater***

The water heater must have a temperature / pressure relief valve (TPR), with an attached discharge tube which must extend to within 6 inches of the floor, or exit the interior of the building. If the water heater is of a newer design such as tankless or “instant on”, which *does not* require a TPR valve, then a discharge tube will not be required. The temperature range must be within 105-125 degrees Fahrenheit for sanitation and safety purposes. In an “adult only” household, temperature may be higher, but *never* more than 135 degrees Fahrenheit. All electrical or gas connections or vent pipe connection must be correct and secure.

***Refrigerator***

A correctly operating refrigerator must have an interior temperature range of 35-50 degrees Fahrenheit. If the temperature is over 50 degrees with the thermostat set on maximum cold, the refrigerator will fail for health reasons. The freezer compartment must be 32 degrees Fahrenheit or less.

***Carbon Monoxide Detector***

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If a carbon monoxide detector is required by state or local regulations, it must be correctly installed and operational.

***Bedrooms***

Each room used for sleeping must have two (2) exits (one being the entrée door). Minimum bedroom ceiling height is seven (7) feet. Sloping ceiling may not slope to lower than five (5) feet on one side of the room.

***Room Standards***

All rooms in unit must meet HQS standards such as utility rooms, attached shed, closed in porch, basement and garage.

***Mobile Homes***

Must have tie downs or anchors and be skirted

***Building Exterior***

All stairs with four (4) or more steps must have at least one handrail.

Building exterior must be kept safe, decent and sanitary.

***Other Conditions***

The YHA may fail unsanitary units where food, garbage, excrement, filth, etc. exists to a degree where health can be damaged.

The YHA may fail units where papers, clothes and trash are piled high and may be cause for fire/health hazard.

**The YHA has Adopted Local Requirements of Acceptability in Addition to Those Mandated by HUD Regulations:**

- All holes in walls and doors that exceed 8.5 inches by 11 inches are to be patched with the exception of exterior walls that allow weather into the unit. Small holes or minor nail holes are excluded.
- All appliances provide by an owner must be kept in safe and working condition.
- Any appliances that are present in a unit must be in working order.
- If cabinets are designed to have drawers and doors, all must be operational and open and shut securely (tenant preference).
- All doors designed with knobs should have all knobs present and in working condition and open and shut securely

- All closets designed with doors should have all knobs present and in working condition. If closet is designed to have a door, it must have a door installed.
- All sliding glass doors must have proper rollers so that they are easy to work.
- All plumbing fixtures must be free from drips and leaks
- All severely chipped or rusted sinks must be patched, repaired, or replaced.
- All light fixtures that are made to have a globe within 3 feet of water (tub/shower area or bathroom or kitchen sink), must have one installed.
- All holes in the yard area that could be a tripping factor must be leveled. Grass must be manageable and in compliance with local code requirements.
- Smoke detectors and Carbon Monoxide detectors must be present in all units according code requirements.
- Units must be clearly identified with house or apartment numbers.
- If windows are meant to be operable, they cannot be nailed shut or made inoperable.
- Items other than outside furniture cannot be stored outside on porches, patios or in other outside areas.
- All rooms used for sleeping must have two (2) exits which are not blocked by furniture or other obstructions.
- All outside sheds must be in good condition with no broken windows and/or no other safety hazards.
- If a door screen is present, it must not have any tears and/or holes

### **Special HQS Requirements of YHA for Electrical Receptacles (PIH 2010-8)**

The HCV program regulations at 24 CFR 982.401(f) set forth the HQS requirements and acceptability criteria with respect to illumination and electricity for the housing unit. The regulations state that a unit must include the following acceptability criteria for electricity.

- the kitchen and bathroom must have one permanent ceiling or wall light fixture in proper operating condition;
- the kitchen must have at least one electrical outlet in proper operating condition; and

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- the living room and each bedroom must have at least two electrical outlets in proper operating condition (permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets).

The inspector is responsible for determining whether the outlets are in “proper operating condition.” While the regulation does not define what the Department considers “proper operating condition,” HUD-Form 52580A cites examples of electrical hazards including:

- broken wiring;
- non-insulated wiring;
- frayed wiring;
- improper types of wiring, connections or insulation;
- wires lying in or located near standing water or other unsafe places;
- light fixture hanging from electric wiring without other firm support or fixture;
- missing cover plates on switches or outlets;
- badly cracked outlets;
- exposed fuse box connections; and
- overloaded circuits evidenced by frequently “blown” fuses (which the inspector determines by asking the tenant).

### **Types of Outlets and Their Proper Operating Condition**

In response to an OIG audit, HUD is issuing this Notice to clarify the proper operating condition of electrical outlets (110V/120V). There are two basic types of outlets: two-pronged (also called “two-slotted”) and three-pronged outlets. Three-pronged outlets have an additional hole for a ground wire, and are “grounded outlets.” Two-pronged outlets are “ungrounded.”

Generally, original two-pronged, ungrounded outlets and original three-pronged, grounded outlets are acceptable under the HQS. “Upgraded” outlets, which have been changed from two-pronged to three-pronged, are the major area of concern in this Notice.

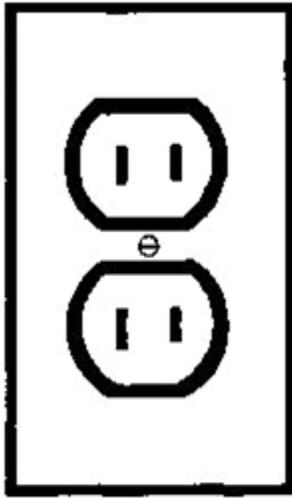


FIGURE 1 UNGROUNDED

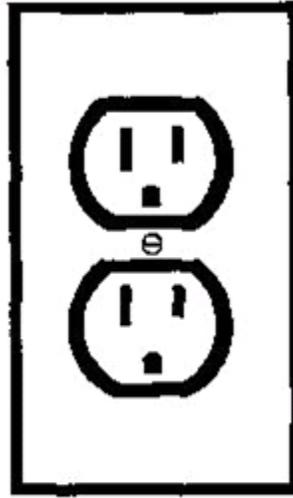


FIGURE 2 GROUNDED

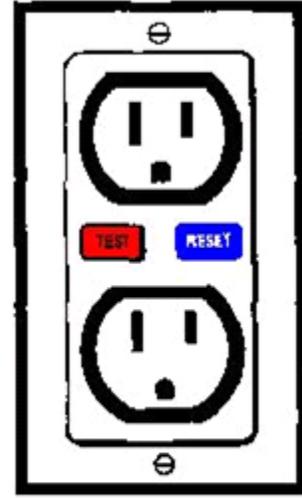


FIGURE 3 GFCI

### Ungrounded Outlets

Older construction (pre-1975) housing will usually have ungrounded two-pronged outlets, which is an acceptable type of outlet under the HQS. (Figure 1) Homes constructed with a two-wire electrical system include only a hot and neutral wire. Two-pronged ungrounded systems and outlets are acceptable under HQS as long as the outlet is in proper operating condition. An owner does not need to upgrade the electrical system of the unit (convert two-pronged outlets to three-pronged) in order for the unit to pass an HQS inspection.

### Grounded Outlets

Newer construction housing will usually have three-pronged outlets, which are acceptable under HQS if the outlets are grounded. (Figure 2) Newer units constructed with a three-wire electrical system include a hot, neutral, and ground wire. This Notice outlines traditional methods of testing grounded outlets for proper operating condition below.

### “Upgraded” Outlets

Many of the cords for today’s appliances contain three-pronged plugs, which can cause problems when an older home does not have three-pronged outlets for these grounded plugs. In the case of older homes, owners often replace two-pronged, ungrounded outlets with three-pronged, grounded type outlets in order to establish appropriate outlets for appliances that have cords with three-pronged plugs. However, in some cases, owners may replace two-pronged, ungrounded outlets with the three-pronged, grounded type outlets without the necessary rewiring that adds a ground wire to the newly installed, grounded type outlet.

Three-pronged, grounded type outlets should not be substituted for ungrounded outlets unless (1) a ground wire is connected to the outlet, or (2) a Ground Fault Circuit Interrupter (GFCI)

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protects the outlet. (Figure 3) Installing a new ground wire may require a licensed electrician to install a new wire to the circuit breaker box and may be prohibitively expensive. A more cost-effective method is to protect the outlet with a GFCI, which provides protection to the outlet. If the GFCI senses a difference in current flow between the hot and the neutral terminals, it shuts off the flow of current to the outlet.

An older construction house with a grounded outlet (Figure 2) would be an indication that the unit may have undergone some upgrading. In such cases, the Department recommends testing a sample of outlets in the unit to determine if three-pronged outlets are in proper operating condition, in addition to verifying the proper operating condition of the required number of outlets per room.

### **Testing of Outlets to Determine Proper Operating Condition**

#### **Two-pronged, Ungrounded Outlets**

The traditional method of testing a two-pronged, ungrounded outlet is to plug an appliance into the outlet and verify that the appliance turns on. This simple method is acceptable for determining that the ungrounded outlet is in proper operating condition and meets HQS.

#### **Three-pronged Outlets**

A three-pronged outlet must meet one of the following three standards for the inspector to consider the outlet in “proper operating condition” as required by HQS:

1. The outlet is properly grounded.
2. A GFCI protects the three-pronged, ungrounded outlet.
3. The outlet complies with the applicable state or local building or inspection code.

The inspector needs to use an outlet tester to determine whether the outlet is properly grounded. There are two types of outlet testers that an inspector can use to determine a properly grounded outlet: a two-wire tester or a three-pronged tester.

**Two Wire Tester**



**Three Prong Tester**



To test an outlet with a two-wire tester, an inspector inserts one probe into the hot slot (usually, the smaller slot) of the outlet and one probe into the ground hole (bottom hole). If the outlet is properly grounded, the indicator light should light brightly in the same manner

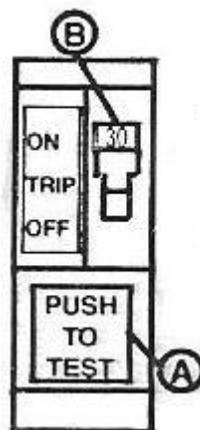
that the light shines when the inspector inserts the probes of the tester into the hot and neutral (right and left) slots.

To test an outlet with a three-pronged tester, the inspector should plug the device in and note the pattern of the lights. Usually there will be a legend printed on the device describing what the lights indicate. The instructions provided by the manufacturer of the tester should be followed.

If the inspector determines that the outlet is not properly grounded based on the results of the outlet tester, he/she may need to conduct some additional investigation to determine if a GFCI protects the outlet. A GFCI can be located at the outlet that is being tested or upstream on the circuit of the outlet. If the GFCI is at an outlet, it will look similar to Figure 3 above, and the inspector should accept the outlet as GFCI-protected after testing the functionality of the GFCI as indicated below.

As stated above, an ungrounded outlet may be protected by a GFCI at another outlet that is upstream from the ungrounded outlet. If the inspector suspects that this may be the case, there is an easy way to determine if the GFCI protects an outlet. The inspector should “trip” all of the GFCIs in the unit; both at the outlet and in the circuit breaker box and determine if there is power to the ungrounded outlet. If the power to the outlet is off, then one of the GFCIs protects the outlet.

Occasionally, a GFCI may be located on the circuit breaker at the load center (circuit breaker box). The following image depicts a GFCI breaker: the distinctive indicator is the “Test” button mounted on the breaker. An inspector may want to “trip” the GFCI in order to identify that the power shuts off to any ungrounded outlet that is protected by the breaker. To “trip” the GFCI, the inspector would press the test button (A) and the switch (B) will move and shut off power to the circuit. This allows the inspector to verify that the outlet is GFCI- protected.



GFCI Breaker

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**Testing of Ground Fault Circuit Interrupters (GFCIs) To Determine Proper**

**Operating Condition**

If an outlet contains a GFCI, the GFCI must work as designed in order for the inspector to consider the GFCI in proper operating condition. However, a GFCI can be in proper operating condition even if it is not grounded. A GFCI is in proper operating condition if pressing the “TEST” button on the GFCI trips the circuit and shuts off power through the receptacle. It is important to note that some three-prong testers have a GFCI test button function built into the tester. The test button on a three-prong tester only works to trip a grounded GFCI. Therefore, if the GFCI is not grounded, the circuit tester will erroneously indicate that the GFCI is malfunctioning. As a result, inspectors cannot depend solely on three prong testers to determine if a GFCI is in proper operating condition. Instead, the inspector should press the “TEST” button, and if the button trips the circuit and shuts off the power through the receptacle, the GFCI is in proper operating condition.

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

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

YHA Policy

The following are considered life-threatening conditions:

- Any condition that jeopardizes the security of the unit
- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling
- Natural or LP gas or fuel oil leaks
- Any electrical problem or condition that could result in shock or fire
- Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit.
- Utilities not in service, including no running hot water
- Conditions that present the imminent possibility of injury
- Obstacles that prevent safe entrance or exit from the unit
- Absence of a functioning toilet in the unit
- Inoperable smoke detectors
- No hot or cold water

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

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

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

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

#### **Family Responsibilities**

The family is responsible for correcting the following HQS deficiencies:

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

The YHA may proceed with termination of assistance, regardless as to whether the owner is enforcing the provisions of the lease for violations.

#### **Owner Responsibilities**

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

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

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

Within 30 days after receiving the risk assessment report from the YHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and

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35.1330]. If the owner does not complete the “hazard reduction” as required, the dwelling unit is in violation of HQS and the YHA will take action in accordance with Section 8-II.G.

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

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

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

#### **YHA Policy**

A unit meets HQS space standard if the dwelling unit has at least one bedroom or living/sleeping room for each two persons. A living/sleeping room is considered space that is not a kitchen or a bathroom.

## **PART II: THE INSPECTION PROCESS**

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

#### **Types of Inspections**

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

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

#### **Inspection of YHA-owned Units [24 CFR 982.352(b)]**

If the YHA owns units in the HCV Program, the YHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a YHA-owned unit. A YHA-owned unit is defined as a unit that is owned by the

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YHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the YHA). The independent agency must communicate the results of each inspection to the family and the YHA. The independent agency must be approved by HUD, and may be the unit of general local government for the YHA jurisdiction (unless the YHA is itself the unit of general local government or an agency of such government).

### **Inspection Costs**

The YHA may not charge the family for an initial inspection or reinspection of the unit. The YHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. The YHA may establish a reasonable fee to owners for a reinspection if an owner notifies the YHA that a repair has been made or the allotted time for repairs has elapsed and a reinspection reveals that any deficiency cited in the previous inspection that the owner is responsible for repairing was not corrected. The owner may not pass this fee along to the family. Fees collected under this paragraph will be included in a PHA's administrative fee reserve and may be used only for activities related to the provision of Section 8 Tenant-Based Rental Assistance.

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

### **Notice and Scheduling**

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

#### YHA Policy

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

### **Attendance at inspections by owner and family.**

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

#### YHA Policy

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

At initial inspection of a vacant unit, the YHA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted, but is not required.

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

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### **Timing of Initial Inspections**

HUD requires the unit to pass HQS before the effective date of the lease and HAP Contract. HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RFTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

#### YHA Policy

The YHA will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 business days of submission of the Request for Tenancy Approval (RFTA).

### **Inspection Results and Re-inspections**

#### YHA Policy

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the YHA for good cause. The YHA will re-inspect the unit within 10 business days of the date the owner notifies the YHA the required corrections have been made.

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

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

### **Utilities**

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

#### YHA Policy

All utilities must be on to make a full and accurate inspection of the unit.

If utility service is not available for testing at the time of the initial inspection, the YHA will allow the utilities to be placed in service after the unit has met all other HQS requirements. The YHA will re-inspect the unit to confirm that utilities are operational before the HAP contract is executed by the YHA.

### **Appliances**

#### YHA Policy

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If the family is responsible for supplying the stove and/or refrigerator, the YHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before the HAP contract is executed by the YHA. The YHA will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection may be scheduled within 30 days of HAP contract approval.

### **8.II.C. ANNUAL/BIENNIAL HQS INSPECTIONS [24 CFR 982.405(a)]**

#### **Scheduling the Inspection**

Each unit under HAP contract must have an annual/biennial inspection no more than 24 months after the most recent inspection. The YHA may use the biennial inspection an alternative forms of inspection as allowed by HUD.

The YHA may accept the results of inspections performed by HUD or for other housing programs such as the LIHTC.

#### YHA Policy

The family is notified that it is a family obligation to allow the Housing Department to inspect the unit at reasonable times with reasonable notice (24 CFR 982.51(d)). Inspections will be conducted on business days only. Reasonable hours to conduct an inspection are between 8:00 A.M. and 4:00 P.M. Families are given a four-hour window of time for when an inspection will be scheduled. The landlord does not need to be present for the inspection and may designate a representative, including the tenant, as long as the individual is 18 years of age or older. No more than two inspections will be conducted unless there is verifiable cause for an extension or reasonable accommodation. If a unit fails the second inspection, no additional inspections will be conducted. Landlords and tenants are responsible for providing access as scheduled. In unit fails for safety issues, the repairs must be completed within twenty four hours (24) hours. If all repairs are not completed with thirty (30) days or before the renewal date of contract, no payment will be made. Rent will be prorated on the date the unit passes inspection. If after the 15<sup>th</sup> of the month, rent will not be paid until the first of the following month.

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

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

If the family is unable to be present but authorizes on adult representative, in writing, to be present, and the adult presents valid photo ID, the inspection will be conducted.

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### **YHA Implementation of Biennial Inspections in lieu of Annual Inspections**

YHA may immediately explore the opportunity as of July 1, 2014 and streamlining process to review the biennial inspection for any unit under HAP contract where the YHA has conducted an HQS inspection within the 12 months preceding July 1, 2014. If YHA has conducted an HQS inspection in that time period, the YHA will not be required to re-inspect until the lapse of 24 months following their last inspection. In making that determination of inspecting the unit every two years- YHA will use a factor that the unit has passed two consecutive initial and/or annual inspection without the need for a re-inspection. If the most recent inspection occurred prior to the 12 months preceding the effective date of this notice, then the YHA is required to conduct an annual HQS inspection for that unit and is afforded no relief from that annual inspection responsibility as a result of the change in the law. However, once that unit has been inspected, the YHA will then have the option to wait up until two years before the next inspection is required.

As of July 1, 2014, the notice does not require the YHA to wait two years from the last inspection before conducting an inspection. If the YHA desires to make inspections on a more frequent basis, it may do so.

The HUD's Section 8 Management Assessment Program (SEMAP) evaluates PHAs on the frequency with which they conduct inspections. HUD will score PHAs based on their compliance with the statutory requirement that they conduct inspections at least biennially.

### **Alternative Inspections for the Biennial Inspection**

The YHA may comply with the biennial inspection requirement through reliance upon an inspection conducted for another housing assistance program. If the YHA relies on an alternative inspection to fulfill the biennial inspection requirement for a particular unit, then the YHA must identify the alternative standard in its administrative plan. Such a change is not considered a significant amendment to the PHA Plan, however, the YHA will include provisions in the following PHA Plan.

Compliance with the biennial inspection requirement may be met by reliance upon an inspection of housing assisted under the housing financed via the Treasury Department's Low-Income Housing Tax Credit program (LIHTC), taking into account the standards employed by those programs. The YHA will use these standards by relying upon an inspection performed by HUD, for example an inspection performed by HUD's Real Estate Assessment Center. YHA is permitted to rely upon inspections conducted for the LIHTC program or performed by HUD with no action other than amending its administrative plan.

In order for an inspection to qualify as an "alternative inspection method," a property inspected pursuant to such method must "meet the standards or requirements regarding housing quality or safety" applicable to properties assisted under the program that employs the alternative inspection method (e.g., LIHTC). For purposes of this notice, HUD is implementing this statutory element as follows:

- If a property is inspected under an alternative inspection method, and the property receives a "pass" score, then the YHA may rely on that inspection to demonstrate compliance with the biennial inspection requirement.

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- If a property is inspected under an alternative inspection method, and the property receives a "fail" score, then the YHA may not rely on that inspection to demonstrate compliance with the biennial inspection requirement.
  - If a property is inspected under an alternative inspection method that does not employ a pass/fail determination--for example, in the case of the LIHTC program, where deficiencies are simply noted--then the YHA must review the list of deficiencies to determine whether any cited deficiency would have resulted in a "fail" score under HQS.
  - If no such deficiency exists, then the YHA may rely on the inspection to demonstrate compliance with the biennial inspection requirements; if such a deficiency does exist, then the YHA may not rely on the inspection to demonstrate such compliance.

Under any circumstance described above in which a YHA is prohibited from relying on an alternative inspection methodology, the YHA must conduct an HQS inspection of any units in the property occupied by voucher program participants and follow HQS procedures to remedy any noted deficiencies. The HQS inspection must take place within a reasonable period of time. HUD will solicit input through rulemaking on circumstances under which a YHA could rely upon corrective actions taken under an alternative inspection method to assure that the property is brought into compliance with the standards or requirements regarding housing quality or safety applicable to the alternative inspection method.

As with all other inspection reports, and as required by 24 CFR 982.158(f)(4), reports for inspections conducted pursuant to an alternative inspection method must be retained for at least three years.

### **Interim Inspections for Biennial Inspection Protocol**

If a family or government official reports a condition that is life-threatening (i.e., the YHA would require the owner to make the repair within no more than 24 hours in accordance with 24 CFR 982.404(a)(3)), then the YHA must inspect the housing unit within 24 hours of when the YHA received the notification. If the reported condition is not life-threatening (i.e., the YHA would require the owner to make the repair within no more than 30 calendar days), then the YHA must inspect the unit within 15 days of when the YHA received the notification. In the event of extraordinary circumstances, such as if a unit is within a Presidentially declared disaster area, HUD may waive the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

### **Mixed-Finance Properties for the Biennial Inspection Protocol**

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Section 220 and the streamlining process gives HUD the authority to alter the frequency of inspections for mixed-finance properties assisted with project-based vouchers to facilitate the use of an alternative inspection method. A unit under HAP contract must be re-inspected at least biennially, through either the regular inspection process or the alternative inspection method.

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

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

##### YHA Policy

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

If the annual inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the YHA may elect to conduct a full annual inspection.

#### **8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b), HCV GB p. 10-32]**

HUD requires a YHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The Inspection Supervisor will conduct the quality control inspections by randomly selecting units that have been inspected within the previous three months. The selection will be from inspections performed as annual, special, and initial. The quality control inspections will include inspections from all YHA inspectors and also include a cross section of neighborhoods.

The unit sample must include only units that have been inspected within the preceding 2 months.

Quality control inspections will be logged in a manner that is reviewable and retained for SEMAP confirmation. Any deficiencies noted during the inspection process will be corrected.

#### **8.II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT**

##### **Notification of Corrective Actions**

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, the YHA will determine (1) whether or not the failure is a life threatening condition and (2) whether the family or owner is responsible.

##### YHA Policy

When life-threatening conditions are identified, the YHA will immediately notify both parties by telephone, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the YHA's notice.

When failures that are not life threatening are identified, the YHA will send the owner and the family a written notification of the inspection results within 5 business days of

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the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. No more than 30 days will be allowed for the correction unless the supervisor and inspector determines to allow an extension for good cause. This excludes Initial and Project Based inspections, which must be re-inspected by the YHA to pass.

The notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life threatening conditions are not corrected within the specified time frame (or any YHA-approved extension), the owner's HAP will be abated in accordance with YHA policy (see 8-II.G.). Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any YHA-approved extension, if applicable) the family's assistance will be terminated in accordance with YHA policy (see Chapter 12).

### **Extensions**

For conditions that are life-threatening, the YHA cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, the YHA may grant an exception to the required time frames for correcting the violation, if the YHA determines that an extension is appropriate [24 CFR 982.404].

#### YHA Policy

Extensions will be granted in cases where the YHA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

- A repair cannot be completed because required parts or services are not available.
- A repair cannot be completed because of weather conditions.
- A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case-by-case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

### **Re-inspections**

#### YHA Policy

The YHA will conduct a re-inspection immediately following the end of the corrective period, or any YHA approved extension.

If the deficiencies have not been corrected by the time of the re-inspection, the YHA will send a notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with YHA policies. If the YHA is unable to gain entry to the unit in order to conduct the scheduled re-inspection, the YHA will consider the family to have violated its obligation to make the unit available for

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inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

### **8.II.G. ENFORCING OWNER COMPLIANCE**

If the owner fails to maintain the dwelling unit in accordance with HQS, the YHA must take prompt and vigorous action to enforce the owner obligations.

#### **HAP Abatement**

If an owner fails to correct HQS deficiencies by the time specified by the YHA, HUD requires the YHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

#### YHA Policy

The YHA will make all HAP abatements effective the first of the month following the expiration of the YHA specified correction period (including any extension).

The YHA will inspect abated units within 5 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction. The landlord is not entitled to any back rent from the YHA for units that have been abated due to a failed HQS.

#### **HAP Contract Termination**

The YHA must decide how long any abatement period will continue before the HAP contract will be terminated. The YHA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. The YHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

#### YHA Policy

The maximum length of time that a HAP may be abated is 90 days. However, if the owner completes corrections and notifies the YHA before the termination date of the HAP contract, the YHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by the YHA is 30 days.

### **8.II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]**

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by the YHA (and any extensions), the YHA will terminate the family's assistance, according to the policies described in Chapter 12.

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If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

### **PART III: RENT REASONABLENESS [24 CFR 982.507]**

#### **8-III.A. OVERVIEW**

Except in the case of certain LIHTC-assisted units, or RAD conversions, no HAP contract can be approved until the YHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

No HAP contract can be approved until the YHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

#### **YHA-owned Units [24 CFR 982.352(b)]**

In cases where an HCV family is receiving assistance in a YHA-owned unit, the YHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A YHA-owned unit is defined as a unit that is owned by the YHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the YHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the YHA. The independent agency must be approved by HUD, and may be the unit of general local government for the YHA jurisdiction (unless the YHA is itself the unit of general local government or an agency of such government).

#### **LIHTC and HOME Assisted Units [24 CFR 982.507(c)]**

For units receiving low-income housing tax credits (LIHTCs), a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the YHA must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the YHA for the unit size involved.

#### **8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED**

##### **Owner-initiated Rent Determinations**

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The YHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. The YHA (or independent agency in the case of YHA-owned units) will assist the family with the negotiations upon request. At initial occupancy the YHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments may be done no more than annually and must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent HQS inspection have been corrected. Rent increases must be requested at least 60 days before the effective date of the increase.

### YHA Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, the YHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. Three comparable units will be used, wherever available, for each new contract executed.

Rent reasonableness is determined by analyzing the local rental market and through contact with owners and property managers of rental property.

The market area for rent reasonableness comparables is broad, but units will be compared on a neighborhood basis wherever possible.

The YHA will maintain a computer list by ZIP Code of reasonable rents currently under contract.

The data for other unassisted units the owner owns will be gathered from Apartment Guide information, newspapers, realtors, professional associations, and inquiries of owners.

The YHA will maintain books or computer records that include comparable data on unassisted units in the market. Staff in making their rent reasonableness determinations will use this data. The books will be updated on an annual basis.

The YHA will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination by the inspector either in writing or orally.

All rents adjustments will be effective the first of the month following 60 days after the YHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

### **YHA- and HUD-Initiated Rent Reasonableness Determinations**

HUD requires the YHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 5 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the YHA to make a determination at any other time. The YHA may decide that a new determination of rent reasonableness is needed at any time.

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YHA Policy

In addition to the instances described above, the YHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the YHA determines that the initial rent reasonableness determination was in error or (2) the YHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

**8-III.C. HOW COMPARABILITY IS ESTABLISHED**

The YHA will determine and document on a case-by-case basis that the approved rent is reasonable in comparison to rent for other comparable unassisted units in the market. This applies to all programs.

The YHA will not approve a lease until the YHA determines that the initial rent to owner is a reasonable rent. The YHA must redetermine the reasonable rent before any increase in the rent to owner, and if there is a five percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect one year before the contract anniversary.

The YHA must redetermine rent reasonableness if directed by HUD and based on a need identified by the YHA's auditing system. The YHA may elect to redetermine rent reasonableness at any other time. At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or redetermined by the YHA

The owner will be advised that by accepting each monthly housing assistance payment s/he will be certifying that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises.

If requested, the owner must give the YHA information on rents charged by the owner for other units in the premises or elsewhere. **The YHA will only request information on the owner's units elsewhere if the YHA has cause to demonstrate that the owner has a tendency to charge higher rents to program participants or if needed for rent reasonableness comparables.**

The data for other unassisted units will be gathered from **newspapers, Internet Realtors, professional associations, inquiries of owners, market surveys, and other available sources.**

The market areas for rent reasonableness are **census tracts and/or neighborhoods** within the YHA's jurisdiction. Subject units within a defined housing market area will be compared to similar units within the same area.

The following items will be used for rent reasonableness documentation:

- Size (number of Bedrooms/square footage)
- Location
- Quality
- Amenities (bathrooms, dishwasher, air conditioning, etc.)
- Housing Services

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Age of unit  
Unit Type  
Maintenance  
Utilities

### **Rent Reasonableness Methodology**

In accordance with the regulations and PIH 2003-12, the voucher program regulation at 24 CFR 982.507 requires the YHA to certify that the rent charged to the housing choice voucher tenant is not more than the rent charged for other unassisted comparable units. Section 982.507(c) states that the owner must give the YHA information requested by the YHA on rents charged by the owner for other units in the premises or elsewhere. The RFTA, Form HUD-52517 was revised to add information from owners of multifamily properties on the rents charged for three (3) recent rentals of comparable unassisted units in the same complex. The owner supplies this information in Section 12a of the revised RFTA. YHA can use the information provided in Section 12a of the form to determine and document rent reasonableness for comparable unassisted units in the same apartment complex.

In determining the reasonableness of rents for units located in a multifamily project that is not substantially assisted, the YHA may base its determination on the rents charged for the three comparable unassisted units identified by the owner on the RFTA. In such cases, the YHA does not have to obtain additional rent comparables in other multifamily housing in the area.

There has been some confusion regarding the interpretation of 24 CFR 982.507(b) of the voucher program regulation. According to Section 982.507(b):

*“Comparability.* The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider: (1) The location, quality, size, unit type, and age of the contract unit; and (2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.”

Previously, YHA was under the impression that they have to routinely consider and justify rent reasonableness individually for each of the nine criteria listed in Section 982.507(b) to “fully comply” with the regulation. HUD realizes that, in the wake of the Section Eight Management Assessment Program (SEMAP) implementation, commercial trainers have stressed the need for PHAs to consider all nine factors stated in the regulation, causing PHAs to expend excessive administrative resources for rent reasonableness determinations. HUD notified YHA (PIH 2003-12) that this was a misconception and to **clarify the misconception. HUD never intended that PHAs must consider each of the nine criteria to determine rent reasonableness of each assisted unit in order to “fully comply” with the regulation.**

The preamble to Subpart K, Rent and Housing Assistance Payment, in the April 30, 1998, Federal Register provides that “determination of rent reasonableness for Section 8 tenant-based

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assistance does not call for a special or unusual valuation in accordance with detailed procedures prescribed by HUD.” The Rule “contains [only] a brief and simple statement of the basic standards to be applied by a PHA in determining rent reasonableness for the Section 8 tenant-based programs.” The Rule acknowledges, “PHAs have extensive experience in determining rent reasonableness” and instructed, “each PHA should use appropriate and practical procedures for determining rental values in the local market.”

In any determination about the reasonableness of rent for a particular unit, a prospective tenant should consider factors such as location, quality, size, type, age, amenities, housing services, maintenance and utilities to be supplied by the owner. Since program inception, the criteria were meant to assist PHAs in developing a common sense approach to valuing a unit. It remains important to note that the Department places a high priority on accurate rent reasonableness determinations and requires that such determinations be performed in a documented, reasonable, and consistent manner. In any determination about the reasonableness of the rent for a particular unit, a renter (and whoever is conducting the comparability determination) implicitly or explicitly considers the nine comparability criteria specified in HUD’s regulations.

It is not, however, necessary or cost-effective to try to quantifiably document or separately evaluate each of these criteria. To the extent possible, rent comparability should be based on rents paid for similar units in the same general location that are also generally similar in terms of the overall quality of housing services provided. Any procedures or documentation used should reflect this approach.

With this in mind and in adherence with HUD requirements, the YHA utilizes a simplified rent reasonableness system that compares similar units and includes and considers the HUD factors listed above. This system on multi-family shall be as outlines in the previous paragraphs. The system on single family or other units that are not part of a multifamily housing complex shall include 2 or 3 comparable units.

Information is gathered on unassisted rental units in the YHA market area, and each unit is rated, using the YHA’s rent reasonableness system. Using an automated method, the average rents are identified for units of like size and type within the same market area. Attempts will be made to localize the unit within a small jurisdiction (under a 5 mile radius). As many defined factors of the items listed above on the unit to be assisted will be compared, to those factors of comparable unassisted units in the database. The average will be adjusted up or down based on the estimated dollar value of the comparable items in comparison with the total database.

#### **Unassisted Units on the Premises (PIH 2009-51)**

In determining that the rent to owner does not exceed the rents charged for comparable unassisted units on the premises, the YHA takes into consideration the rents for those units in the premises that are not assisted under a Federal, State, or local government program.

Units for which the owner has simply decided of his or her own volition to charge rents that are below what other tenants are charged and what the market might actually bear are not assisted units for purposes of rent reasonableness determinations. Rents for these particular units in the premises must be considered in determining if an HVC rent to owner is reasonable.

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In addition, the YHA must take into consideration the real value of the rents charged by the owner for unassisted comparable units in the premises when determining rent reasonableness. For example, if the rent recorded on the lease for comparable unassisted units on the premises is the same as the rent for an HCV family but an owner is reducing the amount that is actually required to be paid by the unassisted tenants, the YHA takes the actual amount into consideration. For example, unassisted tenants might be receiving a credit each month, or a “rent-back”, or free rent some months, or some other type of subsidy from the owner. All of these actions reduce the true value of the charged rent, and the YHA must use these reductions to determine the actual ‘rent’ the owner is charging for the unassisted units.

Note, however, in some rental markets it is common practice for certain employees of the property management company (e.g., a resident manager) to reside in the property rent-free or at a significantly reduced rent as part of their employment compensation. The YHA should not take the rent or lack of rent for units in which a resident manager or similar type employee resides into consideration in making a rent reasonableness determination. The rent for these units does not represent the rent that is charged or would be charged for a comparable unassisted unit, but rather reflects some or all of the owner’s compensation for his or her employee(s).

In the case of a family moving into a multifamily property, the YHA may choose to only consider the most recent rentals in determining the rents that the owner is charging for comparable unassisted units. In some markets, new tenants routinely pay higher rents than the rents that longer time tenants in comparable units may be paying (often due to local rent stabilization programs or ordinances that limit rent increases for existing tenants).

However, in determining if subsequent rent increases result in rents that are reasonable for units occupied by families under voucher Housing Assistance Payments (HAP) contracts, the YHA should take any rent setting policies by the owner for existing tenants into consideration. Any increases in rent for HCV tenants over time should be similar to increases charged to unassisted tenants who have lived in their units for approximately the same amount of time. In other words, rents for existing HCV tenants may not exceed the rents charged to unassisted tenants in comparable units who have been in a property for approximately the same amount of time.

Similarly, in the case of a multifamily property undergoing a Housing conversion action, the families receiving vouchers as result of the action are existing tenants of the property, and the rents charged those families that choose to remain at the property with their HCV assistance must not exceed the rents charged for those existing tenants that do not qualify or do not accept the HCV assistance, even if the owner intends to eventually charge new tenants higher rents.

**The unit and the comparables shall be maintained in the file.**

The YHA maintains **database that** includes data on unassisted units for use by staff in making rent reasonableness determinations. The data is updated on an ongoing basis and purged when it is more than 12-months old

**Units that Must Not be Used as Comparables (PIH 2010-18 and PIH 2009-51)**

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest

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Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance. If a unit to be assisted is located in a complex that is regulated by a government entity- HUD, IRS, etc.; then the YHA shall use the rent determined by the government entity as being reasonable.

As noted in HUD Notice PIH 2009-51, in determining rent reasonableness, the YHA must ensure that the rents paid for HCV assisted units do not exceed the rents for comparable units that are not assisted under a Federal, State, or local government program. Units for which the owner has simply decided of his or her own volition to charge rents that are below what other tenants are charged and what the market might actually bear are not assisted units for purposes of rent reasonableness determinations. Rents for these particular units in the property must be considered to establish if an HVC rent to owner is reasonable.

However, in addition to units assisted under a Federal, State or local government program, the following units are also considered to be assisted units on the premises and would not be taken into consideration for rent reasonableness determinations:

- Units where the rents and/or rent increases are controlled or restricted by law or a court order, so long as the law or court order does not also apply to voucher participants. The YHA is responsible for verifying the existence and applicability of the law or court order prior to excluding the units from the rent reasonableness determination.

In cases of a property undergoing a Housing Conversion Action, units occupied by tenants on the date of the eligibility event who do not receive vouchers are considered assisted if the owner chooses to continue below market rents to those families by offering lower rents or other rent concessions to the impacted families. If the owner of such a property intends to charge lower rents to the non-voucher tenants living in the property at the time of conversion, the owner must provide written notice to the YHA and a list of the covered families, a description of the concession, the duration of the lower rents or concessions, the units in which the families are residing, and copies of the families' leases.

Owners of multifamily properties that underwent a Housing Conversion Action prior to the issuance of this Notice may also provide such a notice to the YHA at the time of a subsequent rent increase for voucher families, identifying families that resided in the property on the date of the eligibility event that did not receive a voucher. The owner must provide the same information and documentation that is required for new conversion actions, including evidence that the covered families resided in the property on the date of the eligibility event. The YHA, upon verifying the information submitted by the owner, must then exclude those units from future rent reasonableness determinations for the duration of the lower rents or concessions.

### **Rents Charged for Other Units on the Premises**

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises. YHA

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will use the RFTA as a method to determine rent reasonable for multifamily units in accordance with HUD's PIH Notice 2003-12 and the current RFTA.

By accepting the YHA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give the YHA information regarding rents charged for other units on the premises.

### **8-III.D. YHA RENT REASONABLENESS DATA BASE METHODOLOGY**

#### **How Market Data is Collected**

##### YHA Policy

The YHA will collect and maintain data on market rents in the YHA's jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

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<b>EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS</b>
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Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

**Sanitary Facilities**

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

**Food Preparation and Refuse Disposal**

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

**Space and Security**

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

**Thermal Environment**

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene, portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

**Illumination and Electricity**

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

**Structure and Materials**

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

### **Interior Air Quality**

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one openable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

### **Water Supply**

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

### **Lead-Based Paint**

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- Provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the YHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by the YHA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

### **Access**

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

### **Site and Neighborhood**

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

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### **Sanitary Condition**

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

### **Smoke Detectors**

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

### **Hazards and Health/Safety**

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

<p style="text-align: center;"><b>EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY</b></p>
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Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities.* The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
- *Food Preparation and Refuse Disposal.* The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
- *Space and Security.* The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.

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- *Energy conservation items.* The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
  - *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.
- (6) *Structure and Materials.* Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- (7) *Indoor Air.* Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- (8) *Sanitary Conditions.* The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- (9) *Neighborhood conditions.* Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

**Chapter 9**  
**GENERAL LEASING POLICIES**

**INTRODUCTION**

This Section covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for the YHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the YHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by the YHA and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by the YHA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

**9-I.A. TENANT SCREENING**

The YHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a)(1)].

The YHA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of the YHA's policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before YHA approval of the tenancy, the YHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)].

The YHA must provide the owner with the family's current and prior address (as shown in the YHA records); and the name and address (if known to the YHA) of the landlord at the family's current and prior address. [24 CFR 982.307 (b)(1)].

The YHA is permitted, but not required, to offer the owner other information in the YHA's possession about the family's tenancy [24 CFR 982.307(b)(2)].

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The YHA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

The YHA may not disclose to the owner any confidential information provided by the family in response to a YHA request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(b)(4)].

#### YHA Policy

The YHA will provide the families current and prior address, the name and address of the landlord of current and prior addresses. This information will be provided to an owner once a written request for the information is received.

The YHA will not provide additional information to the owner above the regulatory requirements.

### **9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]**

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the YHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the YHA:

- Completed Request for Tenancy Approval (RFTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RFTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for the YHA to determine whether to approve the assisted tenancy in this unit.

Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

Owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the YHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

Both the RFTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

#### YHA Policy

The RFTA must be signed by both the family and the owner.

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The family or owner must submit the RFTA.

Completed RFTA (including the proposed dwelling lease) must be submitted as hard copies, in-person by the family. RFTA's that are mailed or faxed will be accepted in special circumstances only.

The family may not submit, and the YHA will not process, more than one (1) RFTA at a time.

When the family submits the RFTA, the YHA will review the RFTA for completeness.

If the RFTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RFTA, the YHA will notify the family and the owner of the deficiencies.

Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, or by fax. The YHA will not accept missing information over the phone.

When the family submits the RFTA and proposed lease, the YHA will also review the terms of the RFTA for consistency with the terms of the proposed lease.

If the terms of the RFTA are not consistent with the terms of the proposed lease, the YHA will notify the family and the owner of the discrepancies.

Corrections to the terms of the RFTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail or by fax. The YHA will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the YHA will attempt to communicate with the owner and family by phone, fax, or email. The YHA will use mail when the parties can't be reached by phone, fax, or email.

The lease will be approved if:

The unit met Housing Quality Standards and any additional standard identified in this Administrative Plan;

The rent is determined to be reasonable under the YHA rent reasonableness standards.

When the gross rent for the unit exceeds the payment standard for the family, the participant will not be required to pay more than 40% of monthly adjusted income for rent and utilities on the initial lease.

The security deposit amount is consistent with state and local practice for unassisted units;

The proposed lease complies with HUD requirements;

The owner, unit and family continue to be eligible; and

The owner or owner's agent has supplied a Social Security Number or Employer Identification Number and an IRS form W-9.

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The YHA will not pay assistance on behalf of a family to any owner prior to the effective date of a lease and contract, executed by all parties.

If the lease is disapproved, the owner and family will be provided an opportunity to correct the problem prior to a specific date established by the YHA.

If the lease is approved, final computations of Total Tenant Payment, Tenant Rent, Utility Reimbursement Payment, and Housing Assistance Payments will be completed. The Housing Assistance Contract will be prepared for execution.

Upon completion of the documents, the family and the owner will execute the lease agreement and tenancy addendum and the owner and the YHA will execute the HAP Contract.

Copies of the documents will be furnished to the parties who signed the respective documents

Occupancy of the housing which requires repairs in order to be made decent, safe and sanitary may be assisted through the Section 8 Housing Choice Voucher Programs ONLY after such repairs have been completed.

- Repairs completed by the fifteenth (15<sup>th</sup>) of the month will be prorated
- Repairs completed after the fifteenth (15<sup>th</sup>) of the month will not be prorated and contracts will begin the first (1<sup>st</sup>) of the following month.

**CAUTION:** If the Owner allows a Family to move into a unit prior to execution of a HAP Contract with the YHA, the Owner is doing so at his/her own risk. The YHA will not be obligated to make a payment to the Owner on behalf of the Family during this period.

### **9-I.C. OWNER PARTICIPATION**

The YHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the YHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

### **9-I.D. ELIGIBLE UNITS**

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the YHA's jurisdiction. This includes the dwelling unit they are currently occupying.

**Ineligible Units [24 CFR 982.352(a)]**

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The YHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

#### YHA-Owned Units [24 CFR 982.352(b)]

Otherwise eligible units that are owned or substantially controlled by the YHA issuing the voucher may also be leased in the voucher program. In order for a YHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the YHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a YHA-owned unit without any pressure or steering by the YHA.

#### YHA Policy

The YHA does have eligible YHA-owned units available for leasing under the voucher program.

#### **Special Housing Types [24 CFR 982 Subpart M]**

HUD regulations permit, but do not generally require, the YHA to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option. See Chapter 15 for specific information and policies on any of these housing types that the YHA has chosen to allow.

The regulations do require the YHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

#### **Assisted Living Housing**

PIH 2012-40 applies to all public housing agencies (PHA) that administer the HCV program for families that live in, or wish to live in, assisted living facilities. In accordance with the definition under Section 232(b) of the National Housing Act (12 USC 1715w(b)), an assisted living facility is a public facility, proprietary facility, or facility of a private nonprofit corporation that:

- (1) Is licensed and regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located);
- (2) Makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money,

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using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy; and

- (3) Provides separate dwelling units for residents, each of which may contain a full kitchen and bathroom, and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility.

Assisted living facilities may be referred to as residential care facilities, adult care facilities, congregate care facilities or group homes as long as they meet the requirements noted above. Assisted living facilities are designed for residents who have the physical ability to live independently but need assistance with some activities of daily living such as personal care, transportation, meals, laundry, medication monitoring, security and housekeeping. A person residing in an assisted living unit must not require continual medical or nursing care.

PIH 2012-40 describes HUD's implementation of Section 302 of the Section 202 Supportive Housing for the Elderly Act of 2010 (Public Law 111-372). Section 302, *Monthly Assistance Payment under Rental Assistance*, amends section 8(o)(18)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(18)(B)(iii)) to allow a YHA to require a family to pay more than 40 percent of its monthly adjusted income for a unit in an assisted living facility if the amount or percentage is reasonable given the services and amenities provided by the assisted living facility and as the Secretary deems appropriate.

YHA may submit a request for a waiver of 24 CFR § 982.508 and § 982.305(a)(5) through the waiver process under 24 CFR § 5.110 to require a family to pay more than 40 percent of its monthly adjusted income for an assisted unit, in order to allow the family to lease an assisted living unit that would otherwise be disapproved because the family share would exceed 40 percent of monthly adjusted income. HUD will review such requests on a case-by-case basis and may grant the waiver if HUD determines the request demonstrates good cause.

YHA must submit with its waiver request:

- (1) verification that the unit meets the definition of assisted living;
- (2) a description of the services and amenities provided that would warrant a higher family share; and
- (3) a copy of sections 9 and 12 of the Family Report (form HUD-50058) for verification that family share exceeds 40 percent of adjusted income.

HUD would expect that such requests would not result in the family share exceeding 70 percent of the family's adjusted income.

#### **Duplicative Assistance [24 CFR 982.352(c)]**

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);

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- Section 101 rent supplements;
  - Section 236 rental assistance payments;
  - Tenant-based assistance under the HOME Program;
  - Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
  - Any local or State rent subsidy;
  - Section 202 supportive housing for the elderly;
  - Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
  - Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

#### **Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]**

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

#### **Unit Size**

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

#### **Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]**

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

#### **Rent Burden [24 CFR 982.508]**

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the dwelling unit rent must be at a level where the family's share of rent does not exceed 40 percent of the family's monthly adjusted income. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

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## **9-I.E. LEASE AND TENANCY ADDENDUM**

The family and the owner must execute and enter into a written dwelling lease for the assisted unit. This written lease is a contract between the tenant family and the owner; the YHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

### **Lease Form and Tenancy Addendum [24 CFR 982.308]**

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

All provisions in the HUD-required Tenancy Addendum must also be added word-for-word to the owner's standard lease form, for use with the assisted family. The Tenancy Addendum includes the tenancy requirements for the program and the composition of the household as approved by the YHA. As a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner and the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

### YHA Policy

The YHA does not provide a model or standard dwelling lease for owners to use in the HCV program.

### **Lease Information [24 CFR 982.308(d)]**

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family

### **Term of Assisted Tenancy**

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit the YHA to approve a shorter initial lease term if certain conditions are met.

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YHA Policy

The YHA will not approve an initial lease term of less than one (1) year.

During the initial term of the lease, the owner may not raise the rent to owner, except as provided in assisted housing types as approved by HUD or governmental entities.[ 24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be in the dwelling lease if they exist.

The YHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 CFR 982.309(b)].

**Security Deposit [24 CFR 982.313 (a) and (b)]**

The owner may collect a security deposit from the tenant. The YHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if the YHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

YHA Policy

The YHA will allow the owner to collect any security deposit amount the owner determines is appropriate. Therefore, no modifications to the HAP contract will be necessary.

**Separate Non-Lease Agreements between Owner and Tenant**

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner minus the YHA's housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

YHA Policy

The YHA permits owners and families to execute separate and reasonable cost, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.

Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item,

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appliance or service, may be included in a separate non-lease agreement between the owner and the family.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

### **YHA Review of Lease**

The YHA will review the dwelling lease for compliance with all applicable requirements.

#### YHA Policy

If the dwelling lease is incomplete or incorrect, the YHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by fax. The YHA will not accept missing and corrected information over the phone

Because the initial leasing process is time-sensitive, the YHA will attempt to communicate with the owner and family by phone, fax, or email. The YHA will use mail when the parties can't be reached by phone, fax, or email.

The YHA is permitted, but is not required, to review the lease to determine if the lease complies with State and local law and is permitted to decline to approve the tenancy if the YHA determines that the lease does not comply with State or local law [24 CFR 982.308(c)]

#### YHA Policy

The YHA will not review the owner's lease for compliance with state/local law, unless YHA has reason to believe that the lease does not comply with program requirements.

### **9-I.F. TENANCY APPROVAL [24 CFR 982.305]**

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, the YHA must promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, the YHA must ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by the YHA and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must be reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the YHA, with no conflicts of interest [24 CFR

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982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305(b)].

#### YHA Policy

The YHA will complete its determination within 10 business days of receiving all required information.

If the terms of the RFTA/proposed lease are changed for any reason, including but not limited to negotiation with the YHA, the YHA will obtain corrected copies of the RFTA and proposed lease, signed by the family and the owner.

Corrections to the RFTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. The YHA will not accept corrections over the phone.

If the YHA determines the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. The YHA will instruct the owner and family of the steps that are necessary to approve the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), the YHA will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

#### **9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305]**

The HAP contract is a written agreement between the YHA and the owner of the dwelling unit occupied by a housing choice voucher assisted family. Under the HAP contract, the YHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit and obliges the owner to comply with all program requirements.

The HAP contract format is prescribed by HUD.

If the YHA has given approval for the family of the assisted tenancy, the owner and the YHA execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

The YHA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The YHA must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

The YHA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the YHA will pay housing assistance payments after execution of

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the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60-day period is void, and the YHA may not pay any housing assistance payment to the owner.

#### YHA Policy

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the YHA. The YHA will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and the YHA will execute the HAP contract. The YHA will not execute the HAP contract until the owner has submitted IRS form W-9. The YHA will ensure the owner receives a copy of the executed HAP contract.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

#### **9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]**

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the YHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, YHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, voucher assistance in the unit shall not be continued unless the YHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances
- Changes in lease provisions governing the term of the lease
- The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RFTA) along with a new dwelling lease containing the altered terms. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of rent, the owner must notify the YHA of any changes in the amount of the rent to owner at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. The YHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or give the family notice in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

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YHA Policy

Where the owner is requesting a rent increase, the YHA will determine whether the requested increase is reasonable within 30 business days of receiving the request from the owner. The owner will be notified of the determination in writing or orally.

Rent increases will go into effect on the first of the month following the 60 day period after the owner notifies the YHA of the rent change or on the date specified by the owner, whichever is later.

## Chapter 10

### MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

#### INTRODUCTION

Freedom of choice is a hallmark of the housing choice voucher (HCV) program. In general, therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and YHA policies governing moves within or outside the YHA's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under the YHA's HCV program, whether the family moves to another unit within the YHA's jurisdiction or to a unit outside the YHA's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into the YHA's jurisdiction. This part also covers the special responsibilities that the YHA has under portability regulations and procedures.

#### PART I. MOVING WITH CONTINUED ASSISTANCE

##### 10-I.A. ALLOWABLE MOVES

HUD regulations list five conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the YHA a copy of the notice at the same time [24 CFR 982.314(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.314(b)(1)(ii)].

##### YHA Policy

If the family and the owner mutually agree to terminate the lease for the family's unit, the family must use the YHA notice of intent to move. However, leases that are still within the initial twelve-month term may not be terminated, unless provided by reasonable accommodation or VAWA.

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- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b)(2)]. The family must give the YHA a copy of any owner eviction notice [24 CFR 982.551(g)].
  - The YHA has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.314(b)(1)(i)].
  - The YHA determines the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, the YHA must issue the family a new voucher, and the family and YHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the YHA must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the YHA gives notice to the owner. [24 CFR 982.403(a) and (c)]

### **10-I.B. RESTRICTIONS ON MOVES**

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which the YHA may deny a family permission to move and two ways in which the YHA may restrict moves by a family.

#### **Denial of Moves**

HUD regulations permit the YHA to deny a family permission to move under the following conditions:

#### ***Insufficient Funding***

The YHA may deny a family permission to move if the YHA does not have sufficient funding for continued assistance [24 CFR 982.314(e)(1)].

#### **YHA Policy**

The YHA will deny a family permission to move on grounds the YHA does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the YHA; (b) the YHA can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) the YHA can demonstrate, in accordance with the policies that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs. If denying for insufficient funding, the YHA must notify the local HUD office within 10 business days of a determination to deny a portability or move based on insufficient funding. This policy applies to moves within the YHA's jurisdiction as well as to moves outside it under portability. Once funds are available, the YHA will allow the move.

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***Grounds for Denial or Termination of Assistance***

The YHA has grounds for denying or terminating the family's assistance [24 CFR 982.314(e)(2)].

**YHA Policy**

YHA will grant a family permission to move if YHA has no grounds to deny or terminate the family's assistance for program violations, (a thorough definition of program violations can be found in the Administrative Plan). Further definition of a family's obligations include:

The client is current on any repayment agreements.

Client has provided a copy of the thirty (30) day notice, submitted to and signed by the current landlord. The notice must clearly state the client is in good standing and owes no money.

The client has not received a notice of cancellation from the Housing Authority.

However, in addition, if the calculations reveal that the subsidy amount to be paid to the new owner on behalf of the client would be zero, YHA would not render any assistance should the family proceed with the move.

Upon dispute between the participant and owner on the condition of a unit, repairs, or repair cost, the YHA shall perform a special inspection to determine the participant's obligations for the repairs, cost, or their continuation of assistance in the program.

**Restrictions on Elective Moves [24 CFR 982.314(c)]**

HUD regulations permit the YHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit the YHA to prohibit more than one elective move by a participant family during any 12-month period.

**YHA Policy**

The YHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the YHA's jurisdiction or outside it under portability.

The YHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the YHA's jurisdiction.

The YHA will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), victims of domestic violence, or to address an emergency situation over which a family has no control.

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In addition, the YHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

## **10-I.C. MOVING PROCESS**

### **Notification**

If a family wishes to move to a new unit, the family must notify the YHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.314(d)(2)]. If the family wishes to move to a unit outside the YHA's jurisdiction under portability, the notice to the YHA must specify the area where the family wishes to move [24 CFR 982.314(d)(2), Notice PIH 2004-12]. The notices must be in writing [24 CFR 982.5].

### **Approval**

#### YHA Policy

Families that wish to move must contact their Housing Specialist. The Housing Specialist will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. If the family is eligible to move, the Housing Specialist may assign the date and time for the family to attend a re-house class, if one is required.

### **Reexamination of Family Income and Composition**

#### YHA Policy

For families approved to move to a new unit within the PHA's jurisdiction, the PHA will perform a new annual reexamination in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of the PHA's jurisdiction under portability, the PHA will follow the policies set forth in Part II of this chapter.

### **Voucher Issuance and Briefing**

#### YHA Policy

For families approved to move to a new unit within the PHA's jurisdiction, the PHA will issue a new voucher within 10 business days of the PHA's written approval to move. No briefing is required for these families. The PHA will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and the PHA approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the PHA's jurisdiction under portability, the PHA will follow the policies set forth in Part II of this chapter.

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### **Housing Assistance Payments [24 CFR 982.311(d)]**

When a family moves out of an assisted unit, the YHA may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

Standard procedure for treatment of the HAP on a vacated unit will be as follows: If family moves from the unit between the 1st and the 14<sup>th</sup> of the month, the previous landlord will be paid one half months HAP. If the family moves from the unit between the 15<sup>th</sup> and the 31<sup>st</sup> of the month, the previous landlord will receive the entire months HAP, unless the lease states otherwise.

## **PART II: PORTABILITY**

### **10-II.A. OVERVIEW [HCV Guidebook, PIH Notices 2004-12, PIH 2007-5, PIH 2008-43, and PIH 2011-3, and Final Rule dated August 20, 2015, PIH 2016-09]**

HUD's guidebook and PIH notices provide guidance on public housing agency (PHA) administrative responsibilities related to family moves with continued assistance both within a PHA's jurisdiction and portability moves. In addition to reviewing the administrative responsibilities of the initial PHA and the receiving PHA for moves with continued assistance under portability, HUD's notices and recent final rules set-forth additional requirements for PHAs who deny moves due to insufficient funding both within and outside the initial PHA's jurisdiction in accordance with 24 CFR 982.314(e)(1).

The most current guidance is PIH 2016-09 and the final rule dated August 20, 2015 also:

- Sets forth the penalties that may be imposed on PHAs that deny family requests to move on the basis of 24 CFR 982.314(e)(1) if the conditions necessary to deny the move on the basis of insufficient funding do not exist.
- Requires PHAs to notify HUD within 10 business days when it becomes necessary to deny families' requests to move due to insufficient funding.
- Requires receiving PHAs to provide a notification by email or other confirmed delivery method to the initial PHA on its intent to bill or absorb before the family is approved for the portability move.
- Encourages PHAs to enlist the assistance of the local Area HUD Office in resolving billing related issues.
- Outlines the steps an initial PHA who does not receive annual updates for families under billing arrangements should take in seeking assistance from their Area HUD Office as well as receiving PHAs who do not receive timely payments from initial PHAs

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- Requires an initial PHA to notify the local HUD office within 10 business days of a determination to deny a portability move based on insufficient funding;
  - Provides that the voucher issued by the receiving PHA to the family may not expire before 30 calendar days has passed from the expiration date of the initial PHA's voucher;
  - Requires briefings for all participating on how portability works and the benefits of living in low-poverty census tracts; and
  - Allows a family to choose the receiving PHA to administer their voucher should they choose to use portability.
  - Updates the latest portability guidance issued in HUD Notice.

### **Background**

Portability is a comprehensive process for and PHA and staff should become familiar with the regulations and PIH notices that impact this area. Specific PIH notices include PIH 2008-43, PIH 2004-12, PIH 2007-5 and PIH 2011-3 and Final Rule August 15, 2015. One of the key features of the housing choice voucher program is the mobility of the assistance. The regulations at 24 CFR 982.353 provide that housing choice voucher participants may choose a unit that meets program requirements anywhere in the United States, provided that a PHA administering the tenant-based program has jurisdiction over the area in which the unit is located. Moves with continued assistance can occur both inside and outside of the initial PHA's jurisdiction. The term "portability" refers to the process of leasing a dwelling unit with tenant-based housing voucher assistance outside of the jurisdiction of the PHA that initially issues the family its voucher (the initial PHA). Program regulations covering where a family may move and the responsibilities of the initial PHA and the receiving PHA (the PHA with jurisdiction over the area to which the family moves) are found at 24 CFR 982.353 through 982.355.

When a family moves under portability, the receiving PHA may choose to absorb the family into the receiving PHA's program or bill the initial PHA. The program regulations at 24 CFR 982.355(e) provide that the receiving PHA may bill the initial PHA for housing assistance payments (HAP) and administrative fees to fund the assistance for a portable family. The regulations require that the initial PHA must promptly reimburse the receiving PHA for the full amount of the HAP payments and with 80 percent of the on-going administrative fee (or a negotiated amount if both PHAs agree) for each month that the family receives assistance from the receiving PHA. PHAs apply the pro-ration factor determined by HUD to the 80 percent of the Column B posted rate. The posted administrative fees are found at [www.hud.gov/offices/pih/programs/hcv/adminfees2010.cfm](http://www.hud.gov/offices/pih/programs/hcv/adminfees2010.cfm). These pro-rated fee amounts may be used for the entire calendar year to avoid the need for PHAs to re-calculate their portable fees each quarter. Information on administrative fees for portability billing purposes for subsequent calendar years will be provided in the annual HUD guidance on administrative fees. Administrative fees are subject to funding reductions from HUD.

The regulations further provide that the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required billing forms. The initial PHA and the receiving PHA must also comply with billing and payment deadlines under

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the financial procedures. HUD may assess penalties against an initial PHA or a receiving PHA for violations, as determined by HUD, of the portability requirements.

HUD may transfer units and funds for assistance to portable families to the receiving PHA from funds available under the initial PHA annual contributions contract (ACC) (see 24 CFR 982.355(f)(1)). HUD will continue to exercise this authority to transfer units and funds from the initial PHA to the receiving PHA in cases where the initial PHA fails to comply with the billing procedures described below.

The YHA will follow the rules and policies as set forth by HUD when it is acting as the initial or the receiving PHA for a family.

YHA shall not deny a victim of domestic violence that is eligible under VAWA the access to portability.

The YHA will administer its housing choice voucher program in compliance with all applicable fair housing requirements, including the authorities cited at 24 CFR 5.105(a) and title II of the Americans with Disabilities Act. The YHA must also affirmatively further fair housing in accordance with 24 CFR 903.7(o) by identifying and addressing any impediments to fair housing choice, including helping families use their vouchers to move to non-minority concentrated areas both within its jurisdiction and through portability moves. [24 CFR 982.53].

### **Equal Opportunity Requirements**

The public housing agency must administer its housing choice voucher program in compliance with all applicable fair housing requirements, including the authorities cited at 24 CFR 5.105(a) and title II of the Americans with Disabilities Act. The PHA must also affirmatively further fair housing in accordance with 24 CFR 903.7(o) by identifying and addressing any impediments to fair housing choice, including helping families use their vouchers to move to non-minority concentrated areas both within its jurisdiction and through portability moves. See 24 CFR 982.53 for the equal opportunity requirements for the Housing Choice Voucher program and Chapter 2 for YHA requirements

## **10-II.B. INITIAL PHA ROLE**

### **Allowable Moves under Portability (Final Rule August 20, 2015)**

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA may choose the receiving PHA [24 CFR 982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the YHA's jurisdiction under portability. The initial PHA, in accordance with HUD regulations and YHA's policy, determines whether a family qualifies.

#### ***Applicant Families***

Under HUD regulations, most applicant families qualify to lease a unit outside the PHA's jurisdiction under portability. However, HUD gives the YHA discretion to deny a portability move by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance.

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YHA Policy

In determining whether or not to deny an applicant family permission to move under portability because the YHA lacks sufficient funding or has grounds for denying assistance to the family, YHA will follow the policies established within the Administrative Plan. On denials for insufficient funding, YHA will notify the HUD Area Office within 10 business days of the determination.

In addition, YHA may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

YHA Policy

If neither the head of household nor the spouse/co-head of an applicant family had a domicile (legal residence) in the YHA's jurisdiction at the time the family's application for assistance was submitted, the family must live in the YHA's jurisdiction with voucher assistance for at least 12 months before requesting portability.

The YHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or victims of domestic violence. However, any exception to this policy is subject to the approval of the receiving PHA [24 CFR 982.353(c)(3)].

***Participant Families***

The YHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease. [24 CFR 982.3539b.)]

YHA Policy

The YHA will determine whether a participant family may move out of the YHA's jurisdiction with continued assistance in accordance with the regulations and policies set forth in the program. The YHA will notify the family of its determination in accordance with the approval policy set forth in the policies. YHA will consider exceptions of moving out in violation of the lease for victims of VAWA.

**Determining Income Eligibility**

***Applicant Families***

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(3)]. The family must specify the area to which the family wishes to move [Notice 2004-12].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c)(1)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2004-12].

***Participant Families***

The income eligibility of a participant family is not re-determined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2), 24 CFR 982.355(c)(1)]. However, an initial HAP on a new unit cannot be executed if the amount of assistance is -0-.

### **Reexamination of Family Income and Composition**

No new reexamination of family income and composition is required for an applicant family.

#### YHA Policy

For a participant family approved to move out of its jurisdiction under portability, the YHA generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

If the participant family's income exceeds the income limit of the Receiving PHA, the family will not be denied assistance. However, the PHA cannot enter into a HAP if the amount of assistance is -0-.

The YHA will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

### **Briefing**

The regulations and policies on briefings set forth in Chapter 5 of this plan require the YHA to provide information on portability to all applicant families that qualify to lease a unit outside the YHA's jurisdiction under the portability procedures. A special briefing may be required to explain opportunity areas, how portability works and the benefits in living in low-poverty census tracts.

#### YHA Policy

An individual or group briefing will be mandatory for all portability families. The briefing will be scheduled within 10 business days after the Receiving PHA receives the documents from the family or the Initial PHA.

The YHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5) including any enhancements on opportunity areas. The YHA will provide the name, address, and phone of the contact for the PHA in the jurisdiction to which they wish to move. The YHA will advise the family of the PHA's policies and procedures that they will be under, including subsidy standards and voucher extension policies

### **Voucher Issuance and Term**

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the YHA will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

#### YHA Policy

For families approved to move under portability, the YHA will issue a new voucher within 10 business days of the YHA's written approval to move. The initial term of the voucher will be 60 days.

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If the family moving under portability is living in a unit where HAP has been abated because of the failure to complete the HQS repairs, or the client previously vacated their unit due to unsafe condition, the voucher issuance date will be the effective date of that action.

## **Voucher Extensions and Expiration**

### YHA Policy

The YHA will approve **no** extensions to a voucher issued to an applicant or participant family porting out of the YHA's jurisdiction except under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the initial PHA's jurisdiction and search for a unit there, or (c) as a reasonable accommodation for persons with disabilities. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the initial PHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 60 days following the expiration date of the initial PHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

The receiving PHA will then provide that the Voucher issued by the receiving PHA to a family may not expire before 30 calendar days has passed from the expiration of the initial PHA's voucher. (Final Rule August 20, 2015)

### **Portability-Initial PHA Responsibilities: Contacting the Receiving PHA**

When a family wishes to move under portability, the family must inform the initial PHA of the area to which the family wishes to move. In the case where the family is not currently a program participant, the initial PHA must determine if the family is income eligible in the area to which the family wishes to move. If the family is not income eligible in the area to which the family wishes to move, the PHA must inform the applicant family they may not move to the area in question and receive voucher assistance. Income eligibility is not re-determined when a participant family (a family that is already under a HAP contract) exercises portability.

The initial PHA must contact the receiving PHA via email or other confirmed delivery method to determine whether the receiving PHA will bill or absorb the family's voucher. Based on the receiving PHA's response, the initial PHA must determine whether they will approve or deny the portability request. The policies outline the reasons a PHA may deny a family's request. Once the portability request is approved, the initial PHA issues the family a voucher and must contact the receiving PHA on the family's behalf. The initial PHA must promptly notify the receiving PHA to expect the incoming family (24 CFR 982.355(c)(2)). This means the initial PHA contacts the receiving PHA on the family's behalf, typically by telephone, fax, or email. Simply referring the family to HUD or to a website for information on the receiving PHA's address does not fulfill the responsibilities of the initial PHA under the program regulations. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA (e.g., the name and telephone number of the staff person responsible for working with incoming

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portability families and any procedures related to appointments for voucher issuance the receiving PHA has shared with the initial PHA). The Form HUD-52665, Family Portability Information, contains a line that the initial PHA uses to identify the receiving PHA

#### YHA Policy

Because the portability process is time-sensitive, the YHA will notify the receiving PHA by phone, fax, or e-mail to expect the family. The YHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, e-mail and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. The YHA will pass this information along to the family. The YHA will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

#### **Portability-Initial PHA Responsibilities: Part I of the Form HUD-52665**

Once the family is approved to move using portability, the initial PHA completes Part I of the Form HUD-52665 and mails or faxes it to the receiving PHA, along with a copy of the family's voucher issued by the initial PHA, a current copy of Form HUD-50058, and copies of the income verification supporting the form. (Note that in the case of an applicant, the initial PHA has not completed the HUD-50058 and submitted the information to HUD because the family is not yet a new admission. However, the PHA must provide the family information and income information to the receiving PHA in a format similar to the Form HUD-50058 so that the information is easily available for use by the receiving PHA.)

Part I of the form provides the date by which the initial billing notice provided by the receiving PHA must be received by the initial PHA. The initial billing submission must be completed and mailed by the receiving PHA within 10 working days of the HAP contract execution but no later than 60 days following the expiration date of the family voucher issued by the initial PHA.

If the initial PHA has not received a billing notice by the deadline and intends not to accept a late billing, the initial PHA must inform the receiving PHA of this decision in writing. If the initial PHA informs the receiving PHA that it will not honor a late billing, the initial PHA is not required to honor any billing notice received after the billing deadline. If the initial PHA still subsequently receives a late billing notice on behalf of the family, it simply returns the late Form HUD-52665 to the receiving PHA, and the receiving PHA must absorb the family.

In certain circumstances, HUD may require the initial PHA to accept the late billing (such as where the receiving PHA does not have the funds to support the voucher and the family would be terminated if the initial PHA refused to accept the late billing). The initial PHA may contact HUD to report the receiving PHA's failure to submit the bill in accordance with these procedures. HUD may take action to address the receiving PHA's failure to do so, which may include reducing the receiving PHA's administrative fee. Additionally, HUD may subsequently transfer units and funding from the receiving PHA to the initial PHA when it is feasible, since the initial PHA was required to accept the late billing.

#### YHA Policy

In addition to these documents, the YHA will provide the following information, if available, to the receiving PHA:

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- Social security Numbers (SSNs)
  - Documentation of SSNs for all family members that are on file
  - Documentation of legal identity
  - Documentation of citizenship or eligible immigration status
  - Documentation of participation in the earned income disallowance (EID) benefit
  - Documentation of participation in a family self-sufficiency (FSS) program

The YHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3], upon the family's request.

#### YHA Policy

If the YHA has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail. If the PHA reports that the family is not yet under HAP contract, the YHA will inform the receiving PHA that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. The YHA will send the receiving PHA a written confirmation of its decision by mail.

The YHA will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

The Receiving PHA will notify the Initial PHA in writing of any termination of assistance to families within 10 working days of the termination of assistance. If a hearing is required and requested by the family, the hearing will be conducted by the Receiving PHA, using the regular hearing procedures included in this Administrative Plan. A copy of the hearing decision will be furnished to the Initial PHA.

#### **Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2011-03]**

##### YHA Policy

The YHA will make regular monthly payments on its monthly check run and will utilize direct deposit when available to ensure that the payment is received by the deadline unless the receiving PHA notifies the YHA that direct deposit is not acceptable to them.

#### **10-II.C. RECEIVING PHA ROLE**

##### **Portability-Receiving PHA Responsibilities: Processing Responsibilities**

The receiving PHA must respond by email or other confirmed delivery method to the initial PHA's inquiry to determine if the family's voucher will be billed or absorbed. HUD encourages PHAs to communicate this information via email in order to expedite the families' requests. If the receiving PHA notifies the initial PHA that they will be absorbing the voucher, the receiving PHA cannot reverse its decision at a later date. This prevents placing a financial hardship on the initial PHA and putting a family that has already terminated the lease and vacated their assisted unit and moved to the new jurisdiction at risk of losing their assistance. After receiving the form

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HUD-52665 and supporting documentation from the initial PHA, the receiving PHA must promptly issue a voucher to the family for its search in the receiving PHA jurisdiction, the term of which may not expire before 30 calendar days has passed from the expiration date of the initial PHA voucher. HUD expects the receiving PHA to process the family's paperwork and issue the incoming family a voucher for its jurisdiction within two weeks of receiving the HUD-52665 and supporting documentation, provided the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures.

A receiving PHA should not process the family if the initial PHA voucher has already expired when it receives the paperwork from the initial PHA, but should refer the family back to the initial PHA. The initial PHA would have to decide to extend the term of the initial PHA voucher (and the billing deadline) before the receiving PHA would process the portability move in such an instance.

The receiving PHA does not re-determine income eligibility for a portable family that was already receiving voucher assistance and may not delay the family's housing search in issuing the voucher. Should the receiving PHA wish to conduct its own background checks and/or conduct a new income reexamination on a family that has already received housing assistance payments under the initial PHA, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit until those processes are completed. However, the PHA may take subsequent action (e.g., recalculating the HAP payment based on updated income information; terminating the family's participation in the program due to criminal background or failing to disclose necessary information) against the family based on the results.

In the case of an applicant family, the receiving PHA may delay issuing or otherwise delay approval of a unit only if the re-certification is necessary to determine income eligibility. For example, if the applicant family initially reported they had no earned income but they are moving because they obtained new employment, the receiving PHA may need to conduct a recertification of income to ensure the family is income eligible in the receiving PHA's jurisdiction.

The receiving PHA may always delay approval of the unit or issuance of the voucher if the family refuses to comply with the receiving PHA procedures. In any case where the receiving PHA is refusing to process or provide assistance under the portability procedures, the family must be given the opportunity for an informal review or hearing in accordance with 24 CFR 982.554 or 982.555.

The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA voucher, either when it initially issues its own voucher or by subsequently extending its own voucher's term. However, if the receiving PHA provides the family with search time beyond the expiration date of the initial PHA's voucher, it must inform the initial PHA of the extension and should bear in mind the billing deadline that is based on the expiration date of the voucher issued by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a Request for Tenancy Approval, execute a HAP contract, and cover the anticipated delivery time (if the PHA is not submitting the billing information by fax or email) so that it will be received by the initial PHA by the deadline date.

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If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA, but instead wishes to return to the initial PHA or wishes to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extensions of search time provided by the receiving PHA voucher are only valid for the family's search in the receiving PHA jurisdiction. Any extensions of the initial PHA voucher necessary to allow the family additional search-time to return to the initial PHA's jurisdiction or to move to another jurisdiction would be at the discretion of the initial PHA.

The receiving PHA may absorb the family into its own program once the HAP contract is executed on behalf of the family by the receiving PHA, assuming it has funding available under its ACC to do so and such a decision will not result in over-leasing for the Calendar Year. The receiving PHA may also absorb a portable family assisted through a billing arrangement by terminating the billing arrangement with the initial PHA. In such a case, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family.

Although a receiving PHA notifies the initial PHA of its intent to absorb an incoming family early in the portability process, a PHA does not technically "absorb" a family into its program until the receiving PHA executes a HAP contract on behalf of the family in the receiving PHA jurisdiction. PHAs may not engage in sham or fake portability paperwork exercises in an attempt to address their utilization or leasing problems. If the family is not placed under HAP contract in the receiving PHA jurisdiction, the receiving PHA cannot absorb the family.

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e)(2)].

### **Initial Contact with Family**

When a family moves into the YHA's jurisdiction under portability, the family is responsible for promptly contacting the YHA and complying with the YHA's procedures for incoming portable families [24 CFR 982.355(c)(3)].

If the voucher issued to the family by the initial PHA has expired, the YHA does not process the family's paperwork but instead refers the family back to the initial PHA [Notice PIH 2004-12].

When a portable family requests assistance from the YHA, the YHA must promptly inform the initial PHA whether the YHA will bill the initial PHA for assistance on behalf of the portable family or will absorb the family into its own program [24 CFR 982.355(c)(5)]. If the YHA initially bills the initial PHA for the family's assistance, it may later decide to absorb the family into its own program [Notice PIH 2004-12]. (See later under "Absorbing a Portable Family" for more on this topic.)

### YHA Policy

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Within 10 business days after a portable family requests assistance, the YHA will notify the initial PHA whether it intends to bill the initial PHA on behalf of the portable family or absorb the family into its own program.

If for any reason the YHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2004-12]. (For more on this topic, see later under “Denial or Termination of Assistance.”)

### **Briefing**

HUD allows the YHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family’s search [Notice PIH 2004-12].

### YHA Policy

The YHA will not require the family to attend a group briefing. The YHA will provide the family with a portability briefing packet and, inform the family about the YHA’s payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, opportunity areas and the leasing process. The YHA may require the family attend a full briefing at a later date.

### **Income Eligibility and Reexamination**

HUD allows the YHA to conduct its own income reexamination of a portable family [24 CFR 982.355(c)(4)]. However, the YHA may not delay voucher issuance or unit approval until the reexamination process is complete unless the reexamination is necessary to determine that an applicant family is income eligible for admission to the program in the area where the family wishes to lease a unit [Notice PIH 2004-12, 24 CFR 982.201(b)(4)]. The YHA does not re-determine income eligibility for a portable family that was already receiving assistance in the initial PHA’s voucher program [24 CFR 982.355(c)(1)].

### YHA Policy

For any family moving into its jurisdiction under portability, the YHA will conduct a new reexamination of family income and composition and criminal background check. However, the YHA will not delay issuing the family a voucher for this reason. Nor will the YHA delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the YHA cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, the YHA will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family’s current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

### **Voucher Issuance**

When a family moves into its jurisdiction under portability, the YHA is required to issue the family a voucher [24 CFR 982.355(b)(6)]. The family must submit a request for tenancy

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approval to the YHA during the term of the YHA's voucher and any extensions [24 CFR 982.355(c)(6)].

### **Timing of Voucher Issuance**

HUD expects the YHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the YHA, and the family complies with the YHA's procedures [Notice PIH 2004-12].

#### YHA Policy

When a family ports into its jurisdiction, the YHA will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with the YHA's procedures. The YHA will update the family's information when verification has been completed.

### **Voucher Term**

The term of the YHA's voucher may not expire before the term of the initial PHA's voucher [24 CFR 982.355(c)(6)].

#### YHA Policy

The YHA's voucher may not expire before 30 calendar days has passed from the expiration of the initial PHA's voucher.

### **Voucher Extensions [24 CFR 982.355(c)(6), Notice 2004-12]**

The YHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the YHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

#### YHA Policy

The YHA will extend the term of the voucher to comply with the regulations and will address issues to an incoming portable family. In other cases, if the YHA plans to absorb the family into its own program, YHA will follow the policies on voucher extension set forth in section 5-II.E.

The YHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

The YHA will provide for tolling in accordance with the regulations for the period of processing the RFTA.

### **Portability-Receiving PHA Responsibilities: Part II of Form HUD-52665**

The receiving PHA sends Part II of Form HUD-52665 to the initial PHA. If the receiving PHA will bill the initial PHA, the receiving PHA not only completes Part II of the Form HUD-52665, but also attaches a copy of the new Form HUD-50058 before returning it to the initial PHA. The

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instructions of the Form HUD-52665 provide that the receiving PHA must complete and mail (which may include electronic mail or fax) Part II of the form within 10 working days from the date a HAP contract is executed on behalf of a family but no later than 60 days following the expiration date of the family voucher issued by the initial PHA.

**The initial PHA is generally not obligated to honor initial billings that are not completed and mailed by the receiving PHA within 10 working days after the date the HAP contract is executed.** (Note that it is the date the HAP contract is executed, not the effective date of the HAP contract, which is at issue. For instance, if a PHA executes a HAP contract within 60 days of the approval of the unit, the HAP contract may be retroactive to the date the unit was approved. It is the date the PHA executed the contract, not the retroactive effective date of the contract, that establishes the deadline by which the initial billing must be mailed, emailed or faxed.) The initial PHA must immediately inform the receiving PHA in writing of its decision not to accept the late billing submission. A receiving PHA that failed to send the initial billing within 10 working days following the date the HAP contract is executed is generally required to absorb the family into its own program unless the initial PHA is willing to accept the late submission.

#### **Portability-Timing of the Initial and Subsequent Billing Payments**

The initial PHA must pay the first billing amount due within 30 calendar days of receipt of Part II of the Form HUD-52665. Subsequently, the initial PHA must make payment each month the billing arrangement is in effect **no later than the fifth working day of each month.** The payment must be provided in a form and manner that the receiving PHA is able and willing to accept.

In many cases billing difficulties simply result from miscommunications and the PHAs involved are able to resolve the problem with HUD's assistance. HUD encourages PHAs to work cooperatively to resolve billing difficulties. However, it is ultimately the responsibility of the initial PHA to make billing payments in a timely manner.

The program regulations at 24 CFR 982.355(f)(1) provide that HUD may transfer funds for assistance to portable families to the receiving PHA from funds available under the initial PHA ACC. Upon request of the receiving PHA, HUD will exercise this authority to transfer baseline units and funding from the budget authority of the initial PHA to the receiving PHA in cases where the initial PHA fails to comply with the initial and subsequent monthly billing due dates described above (see section 12 of this notice for further information on the process by which units and funding may be transferred as a result of non-compliance with billing due dates).

The initial PHA may not terminate or delay making payments under existing billing arrangements as a result of over-leasing or funding shortfalls in the initial PHA's program. PHAs may only terminate HAP contracts as the result of insufficient funding in accordance with 24 CFR 982.454 to which they are a party.

#### **Portability-Receiving PHA: On-going Responsibilities**

The receiving PHA must send the initial PHA a copy of the updated Form HUD-50058 at each annual recertification for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount. The Form HUD-50058 should be sent to the initial PHA as soon as the family's annual reexamination is

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complete but no later than 10 working days following the effective date of the annual reexamination. The purpose of this notification is to serve as an annual “reconciliation” to assist both PHAs in fulfilling its accounting and record-keeping responsibilities.

**Annual Reexamination.** The YHA must send the initial PHA a copy of a portable family’s updated form HUD-50058 after each annual reexamination for the duration of time the YHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

#### YHA Policy

The YHA will send a copy of the updated HUD-50058 by fax or email and regular mail at the same time the participant and owner are notified of the reexamination results.

**Change in Billing Amount.** The YHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount.

#### **Failure to Fulfill Obligations**

Should the initial PHA fail to receive an updated Form HUD-50058 within 30 days after the effective date of the annual recertification date, it must send a letter to the receiving PHA to verify the status of the family and a copy of the letter must be sent to the Director (or the staff person designated by the Director) of the Office of Public Housing (OPH) in the HUD Area Office with jurisdiction over the initial PHA. If the receiving PHA fails to correct the problem within 30 days following the notification (e.g., initial PHA informs receiving PHA of late annual billing paperwork June 15<sup>th</sup> and the paperwork is not received by July 15<sup>th</sup>), the initial PHA may request by memorandum to the Director of the OPH with jurisdiction over the initial PHA that HUD require the receiving PHA to absorb the vouchers in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. A copy of the memorandum must be sent to the receiving PHA. The initial PHA must continue to make the monthly payment to the receiving PHA until instructed otherwise by the HUD Area Office.

The OPH will notify the receiving PHA (and the OPH director in the HUD Area Office with jurisdiction over the receiving PHA) within 15 working days of receiving the initial PHA memorandum requesting the absorption of units. The OPH will provide the receiving PHA with

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15 working days to respond and provide any supporting documentation if the receiving PHA is contesting whether the paper in question was late. The OPH in the HUD Area Office with jurisdiction over the initial PHA is the lead HUD office in resolving any dispute over the timeliness of the annual submission. That office is responsible for examining all documentation submitted by the PHAs and then determining if the paperwork was late if the receiving PHA contests the initial PHA's report. The OPH must render a decision no later than 15 working days following the deadline by which the receiving PHA had to respond to the OPH memorandum.

The OPH will send a letter to both the initial and receiving PHAs with copies to the Area Office with jurisdiction over the receiving PHA indicating whether the vouchers should be absorbed by the receiving PHA. If the vouchers are to be absorbed by the receiving PHA, the billing arrangement on behalf of the family or families in question ceases at the first of the following month after the date of the OPH letter (e.g., if the OPH letter is dated June 15, the billing arrangement ends July 1). The initial PHA is still responsible for any outstanding payments due to the receiving PHA.

HUD may in certain instances require the initial PHA to honor a late submission of the annual recertification documents (such as where the receiving PHA is over-leased and is in danger of not being able to stay under unit months available for the Calendar Year). In such a case HUD may take action to address the receiving PHA's failure to submit the notification in a timely manner, which may include reducing the receiving PHA's administrative fee.

The receiving PHA is also required to send a new Form HUD-52665 along with the Form HUD-50058 to report any change in the billing amount, if applicable. The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. However, under no circumstances should the notification be later than 10 working days following the effective date of the change in the billing amount.

**If the receiving PHA fails to send the Form HUD-52665 within 10 working days following the effective date of the change in the billing amount, the initial PHA is not responsible for paying any increase in the monthly billing amount incurred prior to the notification.**

If the receiving PHA is absorbing a family for which it has been billing or if the housing assistance payments are terminated for any reason, the receiving PHA is encouraged to provide adequate notice of the effective date of the absorption or termination to avoid having to return a payment. In any event the receiving PHA **must** notify the initial PHA no later than 10 working days following the effective date of the termination of the billing arrangement. The receiving PHA may not retroactively absorb families for which the receiving PHA was previously billing for any time period that commences before 10 working days from the time the receiving PHA notifies the initial PHA of the absorption, with one exception. If a PHA is experiencing a funding shortfall and needs to take steps to avoid terminations of assistance allows a receiving PHA to retroactively absorb families for which the receiving PHA was previously billing if the receiving PHA and the initial PHA agree. In these cases, the receiving PHA reimburses the initial PHA for payments made back to the effective date of the absorption but only for the current calendar year.

In the case where a family currently under a billing arrangement subsequently decides it wants to move under portability to yet another jurisdiction, the receiving PHA does not issue the family a

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voucher in order to do so. Instead, the receiving PHA notifies the initial PHA of the family request to port to another jurisdiction. The initial PHA is responsible for issuing the family's voucher and sending the Form HUD-52665 and supporting documentation to the new receiving PHA. Good communication between all three PHAs is very important in such a circumstance.

### **Portability-Summary of Portability Billing Deadlines**

The following summarizes the relevant deadlines under the portability billing procedures.

- a. **Submission of Initial Billing Amount (Part II of the Form HUD- 50058)** – Receiving PHA must complete and mail initial billing notice (1) no later than 10 working days following the date the HAP contract was executed and (2) in time that it will be received no later than 60 days following the expiration date of the family's voucher and extensions issued by the initial PHA or receiving PHA.
- b. **Payment of First Billing Amount** – Initial PHA makes payment within 30 days of receipt of Part II of the Form HUD 50058 indicating billing amount.
- c. **Payment of Subsequent Billing Amounts** – The initial PHA is responsible for ensuring that subsequent billing amounts are received no later than the fifth working day of each month for which the monthly billing amount is due.
- d. **Notification of Change in Billing Amount or Other Action** – The receiving PHA notifies the initial PHA of any change in the billing amount as soon as possible (preferably before the effective date to avoid retroactive adjustments) but in no circumstance any later than 10 working days following the effective date of the change.

## **10-II.D. OTHER PORTABILITY CONDITIONS**

### **Portability-Procedures for the Transfer of Units and Funding as a Result of Late Payments**

In the case where the initial PHA fails to make the monthly payment to the receiving PHA by the fifth working day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family or families, the total billing payment that was late or has yet to be paid, and the date the payment was ultimately received (if received at all). A copy of the notification must be sent to the Director (or the staff person designated by the Director) of the Office of Public Housing (OPH) in the HUD Area Office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification (e.g., receiving PHA informs of late payment in June and the August payment is late), the receiving PHA may request by memorandum to the Director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit or units and funding in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. A copy of the memorandum must be sent to the initial PHA.

The OPH will notify the initial PHA (and the OPH director in the HUD Area Office with jurisdiction over the initial PHA) within 15 working days of receiving the receiving PHA's memorandum requesting the transfer of units and funds. The OPH will provide the initial PHA with 15 working days to respond and provide any supporting documentation if the initial PHA is

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contesting whether the billing payments in question were late. The OPH in the HUD Area Office with jurisdiction over the receiving PHA is the lead HUD office in resolving any dispute over the timeliness of the billing payments. That office is responsible for examining all documentation submitted by the PHAs and then determining if the billing payments were late if the initial PHA contests the receiving PHA's report. The OPH must render a decision no later than 15 working days following the deadline by which the initial PHA had to respond to the OPH memorandum.

If the OPH determines that the payments in question were late, the OPH will send a memorandum to the Housing Voucher Financial Management Division (with copies to the Area Office with jurisdiction over the initial PHA as well as to both PHAs) indicating the number of units to be permanently transferred from the initial PHA to the receiving PHA. The number will correspond with the number of families for which billing payments were late. Within 30 days of receiving the OPH memorandum recommending transfer of units and funds, HUD will reduce the baseline number of units and concomitant budget authority from the initial PHA's ACC and increase the baseline number of units and budget authority on the receiving PHA's ACC in order to adjust the PHA program size as a result of poor portability billing performance. HUD will use the revised baseline numbers to readjust the funding. The billing arrangement on behalf of the family or families in question ceases with the transfer of the unit, although the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

These transfer policies notwithstanding, failure to comply with the financial procedures required by HUD, including the billing and payment deadlines outlined above, may also result in the reduction of administrative fees.

#### **Portability-Penalties for the Receiving PHA's Failure to Inform the Initial PHA of the Termination of a Billing Arrangement in a Timely Manner**

If HUD determines that the receiving PHA has not notified the initial PHA that a billing arrangement has been terminated in a timely manner and has continued to accept payments from the initial PHA, HUD may reduce administrative fees for the receiving PHA.

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least 3 months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- The receiving PHA must return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, the receiving PHA must notify the Office of Public Housing in the HUD Area Office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

HUD may, in its discretion, take the following actions:

- Direct the PHA not to utilize their administrative fee reserve account in accordance with 24 CFR 982.155(b)(3).

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- Reduce the administrative fees for the receiving PHA by up to 10 percent of the monthly billing amount in question for each month that the billing payments continued after the billing arrangement was terminated, taking into consideration the circumstances of the particular case. The OPH in the HUD Area Office with jurisdiction over the receiving PHA will inform the PHA by letter of the amount of the sanction imposed as a result of the PHA's failure to promptly notify the initial PHA that the billing arrangement is terminated. The OPH must send a copy of the letter to the FMC and the FMD.
  - Further reduce the administrative fee if the receiving PHA does not promptly return the overpayment to the initial PHA.

This general policy does not in any way restrict the OPH Director from exercising additional remedial action in the event that the receiving PHA failed to notify initial PHAs that the billing arrangements have been terminated.

### **Denying Family Requests to Move**

A PHA may only deny a family's request to move if it has grounds to do so under the program regulations, which are as follows:

- 1) The PHA has grounds to deny the move because of the family's action or failure to act as described in 24 CFR 982.552 or 982.553.
- 2) The family is a non-resident applicant, or the family was a non-resident applicant that has not yet been assisted in the initial PHA jurisdiction for twelve months since being admitted to the program (see 24 CFR 982.353(c)).
- 3) The family is an applicant and is not income-eligible (see 24 CFR 982.353(d)(1)) in the area in which they wish to initially lease a unit.
- 4) The PHA has established policies on the timing and frequency of moves in accordance with 24 CFR 982.314(c)(2), and the requested move does not comply with those policies.
- 5) The PHA does not have sufficient funding for continued assistance to support the move in accordance with 24 CFR 982.314(e)(1).

In addition, the voucher regulations at 24 CFR 982.353(b) further provide that the initial PHA must deny a family's request to move if the family has moved out of its assisted unit in violation of the lease. However, as previously noted in HUD Notice PIH 2007-5, the Violence Against Women and Justice Department Reauthorization Act 2013 (VAWA 2013) amended section 8(r) of the U.S. Housing Act to provide an exception to the prohibition against a family moving under the portability provisions in violation of the lease. VAWA 2013 provides that the family may receive a voucher and move in violation of the lease under the portability procedures if the family has complied with all other obligations of the voucher program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.