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If the circumstances described above exist, the PHA may allow a family to move under portability procedures if the only basis for the denial is that the family is violating the lease agreement. The PHA may request that the family provide the HUD-approved certification form (Form HUD-50066), or other acceptable documentation in order to verify the family's claim that the request to move is prompted by incidences of abuse in the unit.

### **Denying Family Requests to Move Due to Insufficient Funding**

A PHA may only deny a request to move to a higher cost unit within the PHA's jurisdiction or to higher cost area in accordance with 24 CFR 982.314(e)(1) if the PHA would be unable to avoid terminations of housing choice voucher assistance for current participants during the calendar year in order to remain within its budgetary allocation (including any available HAP reserves) for housing assistance payments.

The PHA must provide written notification to the local HUD Office within 10 business days when they determine it is necessary to deny moves to a higher cost unit based on insufficient funding. The notification must include the following documentation:

1. A financial analysis that demonstrates insufficient funds are projected to meet the current calendar year projection of expenses. The projection must not include vouchers that have been issued but are not yet under contract.
2. A statement certifying the PHA has ceased issuing vouchers and will not admit families from their waiting list while the limitation on moves to a higher cost unit is in place.
3. A copy of the PHA's policy stating how the PHA will address families who have been denied moves. The requirements of the policy are described below.

For moves within the initial PHA's jurisdiction, a "higher cost unit" is defined as a unit in which the PHA would have to pay a higher subsidy amount due to an increase in the gross rent for the new unit.

For portability moves, a "higher cost area" is defined as an area where a higher subsidy amount will be paid for a family because of higher payment standard amounts or "more generous" subsidy standards (e.g., the receiving PHA issues a 3-bedroom voucher to a family that received a 2-bedroom voucher from the initial PHA). Before denying the family's request to move due to insufficient funding, the initial PHA must contact the receiving PHA and confirm via email or other confirmed delivery method whether the receiving PHA will administer or absorb the family's voucher. HUD encourages PHAs to communicate this information via email in order to expedite the families' requests. Once the receiving PHA makes the commitment to absorb the voucher, they cannot reverse their decision. If the receiving PHA is willing to absorb the family, there are no grounds to deny the portability move under 24 CFR 982.314(e)(1). The initial PHA may also take into consideration any reported changes in the family's income or composition that may result in a decreased subsidy amount therefore not resulting in an increased cost to the initial PHA.

A PHA **may not** deny a requested move due to insufficient funding under 24 CFR 982.314(e)(1) simply because the family wishes to move to a higher cost unit within the PHA's jurisdiction or to a higher cost area.

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A PHA **may not** deny requests to move, including portability moves, if the subsidy for the new unit is equal to or less than the current subsidy being paid for the family or if the area the family has selected is a lower cost area. A “lower cost area” is defined as an area where the subsidy amount is equal to or lesser than the current subsidy paid because of lower payment standards or less generous subsidy standards (e.g. the receiving PHA issues a 2- bedroom voucher to a family that received a 3-bedroom voucher from the initial PHA).

In projecting whether there is sufficient funding available for the remainder of the calendar year in order to approve the move, the PHA may make reasonable estimates to factor in conditions such as pending rent increases and the attrition rate for families leaving the program. However, a PHA may not include projected costs for vouchers that have been issued to families from the waiting list but not yet leased as part of this analysis. Vouchers that have been issued to those on the waiting list cannot be considered an expense for purposes of determining whether to deny a move due to insufficient funding until such time that HAP contracts are executed and the PHA is legally obligated to make HAP payments.

HUD has posted a spreadsheet on the HUD Housing Choice Voucher Program website that may be used by a PHA to determine if sufficient funding is available to support to a move. The address is: <http://www.hud.gov/offices/pih/programs/hcv>. This spreadsheet is an example of one method of determining if sufficient funding is available and a PHA is not required to use it when making its determination to deny a move under 24 CFR 982.314(e)(1). However, in any case where the PHAs denies a family’s request to move in accordance with 24 CFR 982.314(e)(1), the PHA must be able to demonstrate how it determined that sufficient funding was unavailable when the PHA denied the family’s request to move.

The PHA must establish policies in its Administrative Plan which state how the agency will address families who have requested a move and were denied due to lack of funding once the PHA has determined funds are available for those moves. At a minimum, the PHA policy must address:

- How the PHA will inform families of the PHA’s local policy regarding moves denied due to lack of funding; i.e., information contained in briefing packets or in a letter to the tenant at the time the move is denied.
- How long the family’s request to move will be open for consideration and how the PHA will notify families with open requests when funds become available.

A PHA may not deny a family’s request to move to a higher cost unit or a higher cost area because it wishes to admit additional families from its waiting list into its voucher program, regardless of whether it has unit months available (UMA) to do so. If the PHA denies a family’s request to move, it may not subsequently admit any additional families to its voucher program until the PHA has followed the policy as described above.

If a PHA approves a family’s request to move then subsequently experiences a funding shortfall, the PHA may only retract the voucher if the family would be allowed to remain in their current unit. If the family cannot remain in the unit, (e.g. family has already vacated the unit or family has already notified the owner of their intent to vacate and the owner has re-let the unit to another family) the PHA must not retract the voucher. This requirement applies to moves both within the PHA’s jurisdiction and to portability moves.

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An initial PHA may not terminate a portability voucher under a billing arrangement with a receiving PHA for insufficient funding since the initial PHA is not a party to the HAP contract.

### **Penalties for Improperly Denying Requests For Insufficient Funding**

In general, if HUD determines that a PHA did not follow the policies established in this Notice and has improperly denied a family's request to move due to insufficient funding (e.g., sufficient funding was in fact available at the time of the family request to support the move; PHA failed to comply with request for additional information to support the insufficient funding from the Field Office), HUD may impose a sanction on the PHA, which may include a reduction in the PHA's administrative fee of up to 10 percent for the two quarters following the quarter that HUD identified the improper denial, taking into consideration the circumstances of the particular case. The Office of Public Housing in the HUD Area Office with jurisdiction over the PHA will inform the PHA by letter and will send a copy to the HUD Financial Management Center (FMC) and the Financial Management Division (FMD) to effectuate the fee reduction.

This general policy for improperly denying the family's request to move under 24 CFR 982.314(e)(1) does not in any way restrict HUD from exercising additional remedial actions or imposing sanctions in the event the PHA is denying requests by families to move under portability in violation of program requirements.

### **Portability and Project-based Assistance**

In accordance with 24 CFR 983.2(b)(2), provisions on portability do not apply to the PBV program. A family that is porting into a receiving PHA's jurisdiction may only receive a tenant-based voucher. In order for a tenant based voucher holder to be housed in a PBV unit, the family would have to apply to the receiving PHA's PBV program and give up their tenant-based voucher prior to being housed in the PBV unit.

## **PART III. EMERGENCY TRANSFER UNDER VAWA**

### **10-III.A. EMERGENCY TRANSFER**

The YHA is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA), YHA allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability of YHA to honor such request for tenants currently receiving rental assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether YHA has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the Department of Housing and Urban Development (HUD), the Federal agency that oversees that Public Housing is in compliance with VAWA.

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Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, sexual orientation, disability, or age.

### **10-III.B. Eligibility for Emergency Transfers**

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L, is eligible for an emergency transfer, if:

- The tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit;
- The tenant is a victim of a sexual assault, and the sexual assault occurred on the premises within the 90-day period preceding a request for an emergency transfer.
- A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

### **10-III.C. Emergency Transfer Request Documentation**

To request an emergency transfer, the tenant shall notify YHA's management office and submit a written request for a transfer to the central office.

The tenant's written request for an emergency transfer should include either:

1. A statement expressing why the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under YHA's program.
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-day period preceding the tenant's request for an emergency transfer.

YHA may request additional documentation from a tenant in accordance with the documentation policies of HUD's regulations at 24 CFR part 5, subpart L.

### **10-III.D. Confidentiality**

YHA will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives YHA written permission to release the information, or disclosure of the information is required by law or in the course of an eviction or termination proceeding. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant.

### **10-III.E. Emergency Transfer Timing and Availability**

YHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. YHA will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred.

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**10-III.F. Safety and Security of Tenants**

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe. The tenant is encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

## Chapter 11 REEXAMINATIONS

### INTRODUCTION

The YHA is required to reexamine each family's income and composition at least annually, and to adjust the family's level of assistance accordingly. Interim reexaminations are also needed in certain situations. This chapter discusses both annual and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and YHA policies concerning reexaminations are presented in three parts:

Part I: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

### **Monitoring Deceased Tenants PIH 2010-50 and PIH 2015-02 (See notice for additional details)**

In accordance with PIH Notice 2010-19 and further notices issued after May 17, 2010, YHA must generate the Deceased Tenants Report at least once a month. The purpose of generating the Deceased Tenants Report monthly is to eliminate and/or recover improper payments being made on behalf of deceased Section 8 tenants and ensure YHA is aware of unoccupied public housing units which should be prepared for occupancy and made available for occupancy by the next eligible family. YHA is required to generate the report prior to disbursing the upcoming monthly housing assistance payment (HAP) to owners. YHA must review the report and follow up with the listed families immediately and take the necessary corrective actions outlined for HCV assistance.

For deceased single member households or a household where the remaining household member is a live-in aide, YHA is required to discontinue HAP to the owner no later than the first of the following month after the month in which the death occurred. YHA is required to immediately terminate program assistance for deceased single member households which will result in termination of the HAP contract and HAP to the owner in accordance with the PIH 2010-50 provisions. The owner is **not** entitled to HAP for any month following the month in which the death occurred. There are no exceptions to this policy.

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If the YHA overpaid HAP on behalf of a single member deceased household and fails to collect the overpayment from the owner, the YHA is required to reimburse 100 percent of the overpayment to the HCV HAP account from the Administrative Fee Equity account, Central Office Cost Center (COCC) account, or other non-Federal funds. In addition, if such errors impacted any funding baseline determinations, funding for the affected renewal periods may be adjusted.

YHA cannot reimburse prior year HAP costs with current year HAP funding because the funding carries forward but does not carry back.

HUD will monitor YHA's Deceased Tenants Report on a quarterly basis. If at any time the report identifies deceased single member households who have been deceased for a period exceeding six months, and HUD determines that the YHA has not taken the necessary corrective action, the YHA may be subject to a withholding of its monthly administrative fee each month that the number of single deceased household members is greater than zero.

## **PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]**

### **11-I.A. OVERVIEW**

The YHA may use any and all of the allowable streamlining processes, regulations, or notices as allowable by HUD. The YHA must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

### **11-I.B. SCHEDULING ANNUAL REEXAMINATIONS**

The YHA must establish a policy to ensure that the annual reexamination for each family is completed *within* a 12-month period, and may require reexaminations more frequently [HCV GB p. 12-1].

#### YHA Policy

The YHA will begin the annual reexamination process 120 days in advance of its scheduled effective date. Generally, the YHA will schedule annual reexamination effective dates to coincide with the family's anniversary date.

*Anniversary date* is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family moves to a new unit, the YHA will not perform a new annual reexamination.

The YHA also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

### **Notification of and Participation in the Annual Reexamination Process**

The YHA is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the YHA.

#### YHA Policy

Families generally are required to participate in an annual reexamination interview, which must be attended by the head of household, spouse, or co-head. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact the YHA to request a reasonable accommodation (see Chapter 2).

YHA may conduct annual reexaminations by mail.

Notification of annual reexamination interviews will be sent by first-class mail and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

If the family is unable to attend a scheduled interview, the family should contact the YHA in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, the YHA will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without YHA approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 12) will be sent to the family's address of record.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and the YHA must execute a certification attesting to the role and assistance of any such third party.

### **11-I.C. CONDUCTING ANNUAL REEXAMINATIONS**

As part of the annual reexamination process, families are required to provide updated information to the YHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

#### YHA Policy

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include a YHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documentation related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 7 days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension in writing, not to exceed 7 days.

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If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social Security Numbers
- Disability status- if required
- Citizenship or immigration status

If adding a new family member to the unit causes overcrowding according to the Housing Quality Standards (HQS) (see Chapter 8), 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 [24 CFR 982.403].

HUD recommends and YHA has adopted the policy that annual recertification/reexamination documents include a question asking whether the tenant or any member of the tenant's household is subject to a lifetime state sex offender registration program in any state. YHA will verify this information using the Dru Sjodin National Sex Offender Database and document this information in the same method used at admission. [PIH Notice 2009-35]

For any admissions, if the recertification/reexamination screening reveals that the tenant or a member of the tenant's household is subject to a lifetime sex offender registration requirement, or that the tenant has falsified information or otherwise failed to disclose his or her criminal history on their application and/or recertification/reexamination forms, YHA will pursue eviction or termination of tenancy to the extent allowed by their lease and state or local law.

Notwithstanding the above, if the tenant or a member of the tenant's household, regardless of when they were admitted, commits criminal activity while living in federally assisted housing, the YHA will pursue eviction or termination of tenancy to the extent allowed by their lease and state or local law.

For each historical adjustment including annual recertification (form HUD-50058 action type 14), the YHA is required to do the following:

- Review the EIV Income Report to confirm/validate family-reported income within 120 days of the PIC submission date; and
- Print and maintain a copy of the EIV Income Report in the tenant file; and
- Resolve any income discrepancy with the family within 60 days of the EIV Income Report date. [PIH 2010-19]

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For each annual reexamination of family income and composition, the YHA is required to have the following documentation in the tenant file:

- **No Dispute of EIV Information:** EIV Income Report, current acceptable tenant-provided documentation, and *if necessary* (as determined by the YHA), traditional third party verification form(s).
- **Disputed EIV Information:** EIV Income report, current acceptable tenant-provided documentation, and/or traditional third party verification form(s) for disputed information.
- **Tenant-reported income not verifiable through EIV system:** Current tenant-provided documents, and *if necessary* (as determined by the YHA), traditional third party verification form(s). [PIH 2010-19]

If the tenant does not provide the requested information, the YHA may mail or fax a third party verification request form to the third party source. The YHA is **required** to request third party verification when the tenant disputes EIV information and the tenant is unable to provide acceptable documentation to support disputed information. However, the YHA should **also** remind the tenant that s/he is required to supply any information requested by the YHA for use in a regularly scheduled annual or interim reexamination of family income and composition.

The YHA may **determine** that the tenant is not in compliance with program requirements and terminate tenancy or assistance, or both, if the tenant fails to provide the requested information in a timely manner (as prescribed by the YHA).

### 11-I.D. EFFECTIVE DATES

The YHA must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

#### YHA Policy

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.

If the YHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the YHA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any

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overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date.

If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.

If the YHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the YHA.

If the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the YHA by the date specified, and this delay prevents the YHA from completing the reexamination as scheduled.

## **PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]**

### **11-II.A. OVERVIEW**

Family circumstances may change throughout the period between annual reexaminations. HUD and YHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the YHA must process interim reexaminations to reflect those changes. HUD regulations also permit the YHA to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. The YHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and YHA policies describing what changes families are required to report, what changes families may choose to report, and how the YHA will process both YHA- and family-initiated interim reexaminations.

### **11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

The YHA must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to family obligations under the program, the YHA has limited discretion in this area.

#### YHA Policy

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The YHA will conduct interim reexaminations to account for any changes in household composition or income that occur between annual reexaminations.

During an interim reexamination only the information affected by the changes being reported will be reviewed and verified.

Families will be required to report all increases in income within ten (10) business days of the occurrence.

Families are required to report the following changes to the YHA between regular reexaminations. The changes must be reported within ten (10) business days from the date of the change. Failure to report may result in program termination. These changes will trigger an interim reexamination.

- A.** An increase in household size. Families may only increase household size due to marriage, birth of additional child(ren), custody changes or legal adoptions involving minor children, or additions through the foster care program.

Other family members who have been deleted from the household or were never members of the household may not be added as program participants without YHA approval. Approval will be given only under the following circumstances:

1. The HCV participant has a physical or mental impairment that is expected to be of long-continued or indefinite duration and the addition to the household would enable the HCV participant to continue to live independently; or
2. It is necessary for the HCV participant to care for a family member that has a physical or mental impairment that is expected to be of long continued or indefinite duration.

In order to add a household member other than through birth or adoption (including a live-in aide) the family must request that the new member be added to the program. Before adding the new member to the lease, the individual must complete an application form stating their income, assets, so and all other information required of an applicant. The individual must provide their Social Security Number if declaring eligibility, and must verify their citizenship eligible immigrant status. The new family member will go through the screening process similar to the process for applicants. The YHA will determine the eligibility of the individual before allowing them to be added to the program. If the individual is found to, be ineligible or does not pass the screening criteria, they will be advised in writing and given the opportunity for an informal review. If they are found to be eligible and do pass the screening criteria, the YHA will grant approval to add their name to the program. At the same time, the family's annual income will be recalculated taking into account the income and circumstances of the new family member. The effective date of the new rent will be in accordance with the interim policies.

- B.** A household member is leaving or has left the family unit.
- C.** Family break-up

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In circumstances of a family break-up, the YHA will make a determination of which family member will retain the voucher, taking into consideration the following factors:

1. To whom the voucher was issued.
2. The interest of minor children or of ill, elderly, or disabled family members.
3. Whether the assistance should remain with the family members remaining in the unit.
4. Whether family members were forced to leave the unit because of actual or threatened physical violence by a spouse or other member(s) of the household.

If a court determines the disposition of property between members of the assisted family in a divorce or separation under a settlement of judicial decree, the YHA will be bound by the court's determination of which family members continue to receive assistance in the program.

Because of the number of possible different circumstances in which a determination will have to be made, the YHA will make determinations on a case-by-case basis.

- D. Any adult member of the household that was reported as unemployed on the most recent certification or recertification obtains employment.
- E. Any income is received by a family that on their most recent certification or recertification reported a zero (0) or extremely low household income.

The YHA will promptly issue a determination of the request for a change. The family member requesting the determination may request an informal hearing in compliance with the informal hearing procedures.

Families are not required to, but may at any time, request an interim reexamination based on a decrease in income, an increase in allowable expenses, or other changes in family circumstances. Upon such request, the YHA will take timely action to process the interim reexamination and recalculate the family share.

Rent adjustments due to a reported change, which result in an increase, shall become effective as of the first day of the month following the end of the 30-day notice period.

For changes that result in an increase that were not reported within ten (10) business days, the increase will be made effective the first of the month following the effective date of the change.

### **New Family Members Not Requiring Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require YHA approval. However, the family is required to promptly notify the YHA of the addition [24 CFR 982.551(h)(2)].

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YHA Policy

The family must inform the YHA of the birth, adoption or court-awarded custody of a child within 10 business days.

**New Family and Household Members Requiring Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request YHA approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

When any new family member is added, the YHA must conduct a reexamination to determine any new income or deductions associated with the additional family member, and to make appropriate adjustments in the family share of the rent and the HAP payment [24 CFR 982.516(e)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the 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 [24 CFR 982.403].

YHA Policy

Families must request YHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 14 consecutive days, or 90 cumulative days, within a twelve-month period, and therefore no longer qualifies as a “guest.” Requests must be made in writing and approved by the YHA prior to the individual moving in the unit.

The YHA will not approve the addition of a new family or household member unless the individual meets the YHA’s eligibility criteria (see Chapter 3).

The YHA will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

If the YHA determines an individual meets the YHA’s eligibility criteria as defined in Chapter 3, the YHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued another voucher and will be required to move.

If the YHA determines that an individual does not meet the YHA’s eligibility criteria as defined in Chapter 3, the YHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The YHA will make its determination within 10 business days of receiving all information required to verify the individual’s eligibility.

Only the following will be considered as an addition to the household:

Minors – birth, adoption, custody;

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Persons eighteen (18) years of age or older – significant others, marriage, adult child that has previously been in the household while the family has been on the program;

Live-in aide; or

Foster child/Foster adult

### **Departure of a Family or Household Member**

Families must promptly notify the YHA if any family member no longer lives in the unit

[24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], the YHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

#### YHA Policy

If a household member ceases to reside in the unit, the family must inform the YHA within 10 business days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the YHA within 10 business days.

## **11-II.C. CHANGES AFFECTING INCOME OR EXPENSES**

Interim reexaminations can be scheduled either because the YHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, the YHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

### **YHA-Initiated Interim Reexaminations**

YHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the YHA. They are not scheduled because of changes reported by the family.

#### YHA Policy

The YHA will conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), the YHA will conduct an interim reexamination at the start and conclusion of the second 12-month exclusion period (50 percent phase-in period).

If the family has reported zero/extremely low income, the YHA will conduct an EIV review of the income every 90 days and an interim reexamination every 90 days as long as the family continues to report that they have no income or

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extremely-low income. Families that report zero/extremely low income will be required to provide information regarding their means of basic subsistence, such as food, utilities, transportation, and other subsistence expenses in writing. YHA will require paid utility bills for 90 days to be submitted at interim evaluations for participants claiming zero/extremely low income. Any amount of utility bill payments over the amount of the family's utility reimbursement payment will be averaged, annualized, and included as income. If the family's expenses exceed their known income, YHA will make inquiry as to the nature of the family's resources. If the family fails to provide true and complete information they will receive a notice of termination of assistance.

If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), the YHA will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.

If at the time of the annual reexamination, tenant-provided documents were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, the YHA will conduct an interim reexamination.

The YHA will conduct an interim for FSS enrollment, if required.

The YHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

### **Family-Initiated Interim Reexaminations**

The YHA must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 982.516(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)].

### ***Required Reporting***

HUD regulations give the YHA the freedom to determine the circumstances under which families will be required to report changes affecting income.

### **YHA Policy**

Families are required to report all increases in earned income, including new employment, within 10 business days of the date the change takes effect.

The YHA will only conduct interim reexaminations for families that qualify for the earned income disallowance (EID), and only when the EID family's share of rent will change as a result of the increase. In all other cases, the YHA will note the information in the tenant file, but will not conduct an interim reexamination.

If the families TTP is the minimum rent and/or the family has requested a hardship exemption, the family must report any increase in income. The YHA will adjust the rent at the end of the hardship period.

Families are required to report any other changes in income or expenses between annual recertifications.

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The YHA is required to conduct an interim reexamination when the family has experienced a hardship. Hardships include but are not limited to a reduction in the level of income calculated at the annual recertification, or an increase in an allowable deduction of the deductions calculated at the annual recertification.

### ***Optional Reporting***

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)]. The YHA must process the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

### **YHA Policy**

If a family reports a change that it was not required to report and that would result in an increase in the family share of the rent, the YHA will conduct an interim reexamination on the additional updates.

If a family reports a change that it was not required to report and that would result in a decrease in the family share of rent, the YHA will conduct an interim reexamination. See Section 11-II.D. for the effective dates.

Families may report changes in income or expenses at any time.

## **11-II.D. PROCESSING THE INTERIM REEXAMINATION**

### **Method of Reporting**

#### **YHA Policy**

The family must notify the YHA of changes in writing.

The family will be required to attend an interview for an interim reexamination. However, if the YHA determines that an interview is not warranted, the family will be advised in writing.

Based on the type of change reported, the YHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 days of receiving a request from the YHA. This time frame may be extended for good cause with YHA approval. The YHA will accept required documentation by mail, by fax, or in person.

The YHA will perform reexaminations within a reasonable amount of time, generally within 30 days of the reported change.

For each interim reexamination (form HUD-50058 action type 3) of family income and composition, the PHA is required to have the following documentation in the tenant file:

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**ICN Page** when there is **no** household income discrepancy noted on the household's Income Discrepancy Report tab or Income Discrepancy Report. (PHAs have the discretion to print the EIV Income report, however, only the ICN page is required.)

### **Effective Dates**

The YHA must establish the time frames in which any changes that result from an interim reexamination will take effect [24 CFR 982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent, and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].

### YHA Policy

If the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30-days notice to the family, unless a delay was caused by the family's failure to provide requested documentation. In such cases the increase will be effective the first of the month following the month in which the information was received. The family may be responsible for any overpaid subsidy caused by the delay.

If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*:

The decrease will be effective on the first day of the month following the month in which the change was reported and all required documentation was submitted. In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively, unless the family fails to provide requested documentation. In such cases the decrease will be effective the first of the month following the month in which the information was received.

Residents must report in writing by the 20<sup>th</sup> of the month any loss of income and/or family composition in order for the adjusted rent amount to take effect for the following month, their rent will not be adjusted until the 2<sup>nd</sup> month following the loss of income.

## **PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT**

### **11-III.A. OVERVIEW**

After gathering and verifying required information for an annual or interim reexamination, the YHA must recalculate the family share of the rent and the subsidy amount, and notify the family

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and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

### **11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES**

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the YHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

#### **Payment Standards [24 CFR 982.505]**

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When the YHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If the YHA's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
  - If the payment standard amount has *increased*, the increased payment standard will be applied at the *first annual* reexamination following the effective date of the increase in the payment standard.
  - If the payment standard amount has *decreased*, the decreased payment standard will be applied at the *second annual* reexamination following the effective date of the decrease in the payment standard.
- If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

#### **Subsidy Standards [24 CFR 982.505(c)(4)]**

If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the YHA's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard amount for the family at the family's *first annual* reexamination following the change in family unit size.

#### **Utility Allowances [24 CFR 982.517(d)]**

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in the YHA's utility allowance schedule [HCV GB, p. 12-5]. Chapter 16 discusses how utility allowance schedules are established.

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When there are changes in the utility arrangement with the owner, the YHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, the YHA must use the YHA current utility allowance schedule [24 CFR 982.517(d)(2)].

YHA Policy

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

**11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT**

The YHA must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

- The amount and effective date of the new HAP payment
- The amount and effective date of the new family share of the rent
- The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding the YHA's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

YHA Policy

The notice to the family will include the amount and effective date of the new HAP payment, the new family share of the rent and the new tenant rent to owner. The notice also will state the procedures for requesting an informal hearing.

**11-III.D. DISCREPANCIES**

During an annual or interim reexamination, the YHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the YHA may discover errors made by the YHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 13.

## Chapter 12

### TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify the reasons for which a YHA can terminate a family's assistance, and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter presents the policies that govern voluntary and involuntary terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part discusses various reasons that a family's assistance may be terminated, including voluntary termination by the family, termination because the family no longer qualifies to receive subsidy, and termination by the YHA based on the family's behavior.

Part II: Approach to Termination of Assistance. This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that the YHA may consider in lieu of termination, the criteria the YHA must use when deciding what action to take, and the steps the YHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part presents the policies that govern the owner's right to terminate an assisted tenancy.

#### PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

##### 12-I.A. OVERVIEW

HUD requires the YHA to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits the YHA to terminate assistance for certain other actions family members take or fail to take. In addition, a family may decide to stop receiving HCV assistance at any time by notifying the YHA.

##### 12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

As a family's income increases, the amount of YHA subsidy goes down. If the amount of HCV assistance provided by the YHA drops to zero and remains at zero for 180 consecutive calendar days the family's assistance terminates automatically.

##### YHA Policy

If a participating family receiving zero assistance experiences a change in circumstances that would cause the HAP payment to rise above zero, the family must notify the YHA of the changed circumstances and request an interim reexamination before the expiration of the 180-day period.

### **12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE**

The family may request that the YHA terminate the family's assistance at any time.

#### YHA Policy

The request to terminate assistance should be made in writing and signed by the head of household, spouse, or co-head. Before terminating the family's assistance, the YHA will follow the notice requirements in Section 12-II.E.

### **12-I.D. MANDATORY TERMINATION OF ASSISTANCE**

HUD requires the YHA to terminate assistance in the following circumstances.

#### **Eviction [24 CFR 982.552(b)(2)]**

The YHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease.

#### YHA Policy

A family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. However, the YHA will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in Section 12-II.C.

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

#### **Failure to Provide Consent [24 CFR 982.552(b)(3)]**

The YHA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a reexamination. See Chapter 7 for a complete discussion of consent requirements.

#### **Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]**

The YHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by the YHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

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For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

**Failure to Provide Social Security Documentation [24 CFR 5.218(c)]**

The YHA must terminate assistance if a participant family fails to provide the documentation or certification required for any family member who obtains a social security number, or joins the family.

**Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]**

The YHA must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

**Lifetime Sex Offender [24CFR 5.856 and 5.905] and PIH Notice 2012-28**

In accordance with the regulations at 24 CFR 5.856 and 5.905, YHA must perform necessary criminal history background checks to determine if an applicant, or a member of an applicant's household, is subject to a lifetime registration requirement under a State sex offender registration program. This check must be carried out with respect to the State in which the housing is located and with respect to States where the applicant and members of the applicant's household are known to have resided.

YHA will make the determination, in accordance with their screening standards, whether the applicant and the applicant's household members meet the screening criteria. If these processes reveal that an applicant is a lifetime registered sex offender, or if the applicant withholds or falsifies information on the application, the YHA must deny admission to the program. Before admission can be denied, the applicant must be notified of the right to dispute the accuracy and relevance of the background check information.

YHA shall further deny any participants assistance if they or any member is subject to the lifetime sex offender restriction from assistance.

HUD recommends that at annual recertification or reexamination, the YHA ask whether the tenant or any member of the tenant's household is subject to a State lifetime sex offender registration program in any state. The YHA will verify this information using the Dru Sjodin National Sex Offender Database and/or other official federal, state, and local resources and document this information in the same manner as at admission.

If the recertification screening reveals that the tenant has falsified information or otherwise failed to disclose criminal history on his/her application and/or recertification forms, the YHA will pursue eviction or termination of assistance.

Notwithstanding the above, if the tenant or a member of the tenant's household, regardless of the date of admission, engages in criminal activity (including sex offenses) while living in HUD-assisted housing, the YHA should pursue eviction or termination of assistance to the extent allowed by HUD requirements, the lease, and state or local law.

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## **12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS**

### **Mandatory Policies [24 CFR 982.553(b) and 982.551(I)]**

HUD requires the YHA to establish policies that permit the YHA to terminate assistance if the YHA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity
  - For the purpose of determining a violation, YHA will not consider a family to be engaged in violent criminal activity if the family member is a victim in accordance with the Violence Against Women Act (VAWA). However, nothing should be considered to limit the termination of the person who engages in the criminal act.

### ***Use of Illegal Drugs and Alcohol Abuse***

#### **YHA Policy**

The YHA will terminate a family's assistance if any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

The YHA will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

*Currently engaged in* is defined as any use of illegal drugs during the previous three-year period.

The YHA will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.

In making its decision to terminate assistance, the YHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the YHA may, on a case-by-case basis, choose not to terminate assistance.

### ***Drug-Related and Violent Criminal Activity [24 CFR 5.100]***

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

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*Drug-related criminal activity* is defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

*Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

#### YHA Policy

The YHA will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

The YHA will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

In making its decision to terminate assistance, the YHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the YHA may, on a case-by-case basis, choose not to terminate assistance.

#### **Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c)]**

HUD permits the YHA to terminate assistance under a number of other circumstances. It is left to the discretion of the YHA whether such circumstances in general warrant consideration for the termination of assistance.

#### YHA Policy

The YHA **will not** terminate a family's assistance because of the family's failure to meet its obligations under Family Self-Sufficiency.

The YHA **will** terminate a family's assistance if:

The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related YHA policies.

Any family member has been evicted from federally-assisted housing in the last three years.

Any PHA has ever terminated assistance under the program for any member of the family.

Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

The family currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs.

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The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

The family has breached the terms of a repayment agreement entered into with the YHA or other PHA.

The family has breached any part of the HCV Program.

A family member has engaged in or threatened violent or abusive behavior toward YHA personnel.

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

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

In making its decision to terminate assistance, the YHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the YHA may, on a case-by-case basis, choose not to terminate assistance.

#### ***Family Absence from the Unit [24 CFR 982.312]***

The family may be absent from the unit for brief periods. The YHA must establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

#### **YHA Policy**

If the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.E.

#### ***Insufficient Funding [24 CFR 982.454]***

The YHA may terminate HAP contracts if the YHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

#### **YHA Policy**

The YHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies. If the YHA determines there is a shortage of funding, prior to terminating any HAP contracts, the YHA will determine if any other actions can be taken to reduce program costs. If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the YHA will terminate HAP contracts as a last resort.

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Prior to terminating any HAP contracts, the YHA will inform the local HUD field office. The YHA will terminate the minimum number needed in order to reduce HAP costs to a level within the YHA's annual budget authority.

If the YHA must terminate HAP contracts due to insufficient funding, the YHA will do so in accordance with the following criteria and instructions:

**YHA will terminate assistance to the most recent non-disabled or non-elderly family that has become a participant in the program, until such time as the YHA has sufficient funds to assist. The family will not be required to reapply for the program when sufficient funds are available, but will be provided the opportunity to be assisted. The reinstatement of assistance for families shall be provided in the reverse order of the YHA's list of termination of assistance for the lack of sufficient funds**

## **PART II: APPROACH TO TERMINATION OF ASSISTANCE**

### **12-II.A. OVERVIEW**

The YHA is required by regulation to terminate a family's assistance if certain program rules are violated. For other types of offenses, the regulations give the YHA the discretion to either terminate the family's assistance or to take another action. This part discusses the various actions the YHA may choose to take when it has discretion, and outlines the criteria the YHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notice that must be provided before terminating assistance.

### **12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]**

The way in which the YHA terminates assistance depends upon individual circumstances. HUD permits the YHA to terminate assistance by:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to approve a request for tenancy or to enter into a new HAP contract, or
- Refusing to process a request for or to provide assistance under portability procedures.

### **12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE**

#### **Change in Household Composition**

As a condition of continued assistance, the YHA may require that any household member who participated in or was responsible for an offense and no longer resides in the unit [24 CFR 982.552(c)(2)(ii)].

#### YHA Policy

As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon YHA's request.

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## **Repayment of Family Debts**

### YHA Policy

If a family owes amounts to the YHA or another PHA, as a condition of continued assistance, the YHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the PHA of the amount owed.

## **12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE**

### **Evidence**

For criminal activity, HUD permits the YHA to terminate assistance if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

### YHA Policy

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

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence

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

The YHA is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

### YHA Policy

The YHA will consider the following factors when making its decision to terminate assistance:

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

The effects that termination of assistance may have on other members of the family who were not involved in the action or failure

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities

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

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

The YHA will require the participant to submit evidence of the household member's current participation in or successful completion of a supervised drug

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or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family.

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

If the family includes a person with disabilities, the YHA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

YHA Policy

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

**12-II.E. TERMINATION NOTICE [HCV GB, p. 15-7]**

If a family's assistance is to be terminated, whether voluntarily or involuntarily, the YHA must give the family and the owner written notice that specifies:

- The reasons for which assistance has been terminated
- The effective date of the termination
- The family's right to an informal hearing as described in Chapter 16

If a criminal record is the basis of the termination, a copy of the record must accompany the notice. A copy of the criminal record also must be provided to the subject of the record [24 CFR 982.553(d)].

YHA Policy

When termination is initiated by the YHA, the notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination. However, if a family vacates the unit without informing the YHA, 30 days notice will not be given. In these cases, the notice to terminate will be sent at the time the YHA learns the family has vacated the unit.

When a family requests to be terminated from the program they must do so in writing to the YHA (see section 12-I.C.). The YHA will then send a confirmation notice to the family and the owner within 10 business days of the family's request, but no later than the termination effective date (as requested by the family).

**Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]**

The YHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or eligible immigration

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status; (2) evidence of citizenship and eligible immigration status is submitted timely, but USCIS primary and secondary verification does not verify eligible immigration status of a family; or (3) the YHA determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3) above, such termination must be for a period of at least 24 months.

The notice of termination must advise the family of the reasons their assistance is being terminated, that they may be eligible for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, that they have the right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and that they have the right to request an informal hearing with the YHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Informal hearing procedures are contained in Chapter 16.

#### YHA Policy

The notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination.

### **12-II.F. HOW TERMINATION OF ASSISTANCE AFFECTS THE HAP CONTRACT AND LEASE**

When the family's assistance is terminated, the lease and HAP contract terminate automatically [Form HUD-52641].

The owner may offer the family a separate unassisted lease [HCV GB, p. 15-8].

## **PART III: TERMINATION OF TENANCY BY THE OWNER**

### **12-III.A. OVERVIEW**

Termination of an assisted tenancy is a matter between the owner and the family; the YHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy, and the reasons for which a tenancy is terminated dictate whether assistance also will be terminated.

### **12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310 and Form HUD-52641-A, Tenancy Addendum]**

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

#### **Serious or Repeated Lease Violations**

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease. This includes failure to pay rent or other amounts due under the lease. However, the YHA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

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**Violation of Federal, State, or Local Law**

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

**Criminal Activity or Alcohol Abuse**

The owner may terminate tenancy during the term of the lease if any *covered person*, meaning any member of the household, a guest or another person under the tenant’s control commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
- Any violent criminal activity on or near the premises; or
- Any drug-related criminal activity on or near the premises.

Violent criminal activity does not include victims of domestic violence that are covered under the Violence Against Women Act. (VAWA).

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

The owner may not terminate a victim of VAWA for criminal activity, unless doing so is in compliance with VAWA.

***Evidence of Criminal Activity***

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines they have engaged in the criminal activity, regardless of arrest or conviction and without satisfying the standard of proof used for a criminal conviction.

**Other Good Cause**

During the initial lease term, the owner may not terminate the tenancy for “other good cause” unless the owner is terminating the tenancy because of something the family did or failed to do.

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During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, “other good cause” for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision;
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent).

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

**Domestic Violence Provisions-VAWA (Protections for Victims of Abuse, VAWA 2013)**

An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as serious or repeated violations of the lease or other “good cause” for termination of the assistance, tenancy, or occupancy rights of such a victim.

Criminal activity directly relating to abuse, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an affiliated member of the tenant’s family is the victim or threatened victim of domestic violence, dating violence, sexual assault, or stalking.

Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, a PHA, owner or manager may “bifurcate” a lease, or otherwise remove a household member from a lease, without regard to whether a household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others. This action may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the victim of the violence who is also a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the housing choice voucher program.

Nothing in this section may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.

Nothing in this section limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease

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not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate.

Nothing in this section may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate assistance, to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant is not evicted or terminated from assistance.

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

### **12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]**

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give the YHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the YHA a copy of any eviction notice (see Chapter 5).

#### YHA Policy

If the eviction action is finalized in court, the owner must provide the YHA with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 5 business days following the court-ordered eviction.

### **12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h)]**

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;

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- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
  - The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

#### **12-III.E. EFFECT OF TERMINATION OF TENANCY ON THE FAMILY'S ASSISTANCE**

If a termination is not due to a serious or repeated violation of the lease, and if the YHA has no other grounds for termination of assistance, the YHA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

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<b>EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS</b>
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Following is a listing of a participant family's obligations under the HCV program:

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

YHA Policy

Damages beyond normal wear and tear will be considered to be damages that could be assessed against the security deposit.

- The family must allow the YHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

YHA Policy

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

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

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

YHA Policy

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

- The family must promptly give the YHA a copy of any owner eviction notice.

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- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
  - The composition of the assisted family residing in the unit must be approved by the YHA. The family must promptly notify the YHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request YHA approval to add any other family member as an occupant of the unit.

#### YHA Policy

The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The YHA will determine eligibility of the new member in accordance with the policies in Chapter 3.

- The family must promptly notify the YHA in writing if any family member no longer lives in the unit.
- If the YHA has given approval, a foster child or a live-in aide may reside in the unit. The YHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when YHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

#### YHA Policy

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

- The family must supply any information requested by the YHA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify the YHA when the family is absent from the unit.

#### YHA Policy

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

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space, or HCV Homeownership Program).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of

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other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and YHA policies related to drug-related and violent criminal activity.

- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in near the premises. See Chapter 12 for a discussion of HUD and YHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the YHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]
- A family or any member has not violated any provisions of the Voucher or regulations.

## Chapter 13

### OWNERS

#### INTRODUCTION

Owners play a central role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term “owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term “owner” includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations. However, this chapter is not meant to be an overview of all aspects of owner participation in the HCV program.

The chapter is organized in two parts:

Part I: Owners in the HCV Program. This part discusses the role of an owner in the YHA’s HCV program and highlights key owner rights and responsibilities.

Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between the YHA and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including YHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.

### PART I. OWNERS IN THE HCV PROGRAM

#### 13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]

##### Recruitment

YHA is responsible for ensuring that very low income families have access to all types and ranges of affordable housing in the YHA’s jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the YHA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the YHA’s jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, YHA must identify and recruit new owners to participate in the program.

YHA Policy

The YHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. The YHA will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

- Distributing printed material about the program to property owners and managers
- Contacting property owners and managers by phone or in-person
- Participating in community based organizations comprised of private property and apartment owners and managers
- Developing working relationships with owners and real estate brokers associations

Outreach strategies will be monitored for effectiveness, and adapted accordingly.

**Retention**

In addition to recruiting owners to participate in the HCV program, the YHA must also provide the kind of customer service that will encourage participating owners to remain active in the program.

YHA Policy

All YHA activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

The YHA will provide owners with a handbook that explains the program, including HUD and YHA policies and procedures, in easy-to-understand language.

The YHA will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated YHA contact person.
- Coordinating inspection and leasing activities among the YHA, the owner, and the family.
- Initiating telephone contact with the owner to explain the inspection process, and providing an inspection booklet and other resource materials about HUD housing quality standards.
- Providing other written information about how the program operates, including answers to frequently asked questions.

Additional services may be undertaken on an as-needed basis, and as resources permit.

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### 13-I.B. BASIC HCV PROGRAM REQUIREMENTS

HUD requires the YHA to aid families in their housing search by providing the family with a list of landlords or other parties known to the YHA who may be willing to lease a unit to the family, or to help the family find a unit. Although the YHA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the YHA their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

#### YHA Policy

Owners that wish to indicate their willingness to lease a unit to an eligible HCV family or to help the HCV family find a unit must notify the YHA. The YHA will maintain a listing of such owners and provide this listing to the HCV family as part of the informational briefing packet

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential tenant. The YHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RFTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to the YHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. In addition, the owner must document legal ownership of the specified unit. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The YHA will inspect the owner's dwelling unit at various stages of HCV program participation, to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards, as well as the process for HQS inspections at initial lease-up and throughout the family's tenancy.

The YHA must determine that the cost of the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, the YHA must determine that the share of rent to be paid by the family does not exceed 40 percent of the family's monthly-adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. However, the HCV program requires that the Tenancy Addendum, which helps standardize the tenancy requirements for all assisted families, be added word-for-word to that lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The YHA and the owner enter into a formal contractual relationship by executing the Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HAP contract execution process. Specific HAP contract provisions and responsibilities are discussed later in this chapter 13.

### **13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452]**

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Performing all of the owner's obligations under the Housing Assistance Payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the YHA information required under the HAP contract
- Collecting from the family any security deposit, the tenant's contribution to rent (that part of rent to owner not covered by the housing assistance payment from the YHA), and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services (unless paid by the family under the lease)
- Making modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Comply with VAWA 2013 under the terms of the HAP.

### **13-I.D. OWNER QUALIFICATIONS**

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)].

#### **Owners Barred from Participation [24 CFR 982.306(a) and (b)]**

The YHA must not approve the assisted tenancy if the YHA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct the YHA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

#### **Leasing to Relatives [24 CFR 982.306(d), HCV GB p. 11-2]**

The YHA must not approve an RFTA if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The YHA may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

#### **Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19]**

The YHA must not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of the YHA (except a participant commissioner)
- Any employee of the YHA, or any contractor, subcontractor or agent of the YHA, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States
- Any current employee of the YHA or for one year thereafter.

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. The YHA must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the YHA must include [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;

- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
- Analysis of and statement of consistency with state and local laws. The local HUD office, the YHA, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV program;
- If the case involves employment of a family member by the YHA or assistance under the HCV program for an eligible YHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;
- If the case involves an investment on the part of a member, officer, or employee of the YHA, description of the nature of the investment, including disclosure/divestiture plans.

Where the YHA has requested a conflict of interest waiver, the YHA may not execute the HAP contract until HUD has made a decision on the waiver request.

#### YHA Policy

In considering whether to request a conflict of interest waiver from HUD, the YHA will consider factors the reasons for waiving the requirement; consistency with state and local laws; the existence of alternative housing available to families; the individual circumstances of a particular family; the specific duties of individuals whose positions present a possible conflict of interest; the nature of any financial investment in the property and plans for disclosure/divestiture; and the possible appearance of impropriety.

#### **Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]**

HUD regulations permit the YHA, at the YHA's discretion, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

The YHA will review the owners eligibility to participate if there has been a complaint (whether public or private) or the YHA receives information that is available through the public domain. YHA may further screen and review information once a year to determine approval or disapproval of an owner.

If the YHA disapproves a request for tenancy because an owner is not qualified, it may not terminate the HAP contract for any assisted families that are already living in the owner's properties unless the owner has violated the HAP contract for those units [HCV GB p. 11-4].

YHA Policy

The YHA will refuse to approve a request for tenancy if the YHA becomes aware that any of the following are true:

The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);

The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

The owner or owner's representative has engaged in any drug-related criminal activity or any violent criminal activity;

The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;

The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of the YHA, or of owner employees or other persons engaged in management of the housing; (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) Is drug-related criminal activity or violent criminal activity;

The owner has a history or practice of renting units that fail to meet state or local housing codes; or

The owner has not paid state or local real estate taxes, fines, or assessment.

The owner is in default of mortgage payments on an assisted unit.

In considering whether to disapprove owners for any of the discretionary reasons listed above, the YHA will consider any mitigating factors. Such factors may include, but are not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others. Upon consideration of such circumstances, the YHA may, on a case-by-case basis, choose to approve an owner.

**Legal Ownership of Unit**

The following represents YHA policy on legal ownership of a dwelling unit to be assisted under the HCV program.

### YHA Policy

The YHA will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without acceptable documentation of legal ownership (e.g., deed, proof of real estate taxes for most recent year).

For a land contract, acceptable documentation of legal ownership includes a copy of the contract that permits the property to be leased. In addition, the contract must be recorded with the county recorders office.

A copy of any management agreement is required for those units being managed on behalf of an owner.

### **13-I.E. NON-DISCRIMINATION [HAP Contract – Form HUD-52641]**

The owner must not discriminate against any person because of race, color, religion, sex, ancestry, national origin, age, familial status, sexual orientation, handicap or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with the YHA.

The owner must cooperate with the YHA and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with the YHA.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

## **PART II. HAP CONTRACTS**

### **13-II.A. OVERVIEW**

The HAP contract represents a written agreement between the YHA and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the YHA's obligations. 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.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and lease the space. See chapter 15 for a discussion of any special housing types included in the YHA's HCV program.

If the YHA has given approval for the family of the assisted tenancy, the owner and the YHA execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

### **13-II.B. HAP CONTRACT CONTENTS**

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A of the contract includes basic **contract information** about the name of the tenant family, address of the contract unit, names of all household members, first and last dates of initial lease term, amount of initial monthly rent to owner, amount of initial housing assistance payment, utilities and appliances to be supplied by owner and tenant, signatures of YHA and owner [HCV Guidebook, pp 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, YHA does have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. YHA policy on the amount of security deposit an owner may collect is found in chapter 9.

In addition, YHA does have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the YHA is deemed received by the owner (e.g., upon mailing by the YHA or actual receipt by the owner).

#### YHA Policy

The YHA has not adopted a policy that defines when the housing assistance payment by the YHA is deemed received by the owner. Therefore, no modifications to the HAP contract will be necessary.

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Purpose
- Lease of Contract Unit
- Maintenance, Utilities, and Other Services
- Term of HAP Contract
- Provision and Payment of Utilities and Appliances
- Rent to Owner: Reasonable Rent
- YHA Payment to Owner
- Owner Certification
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- YHA and HUD Access to Premises and Owner's Records
- Exclusion of Third Party Rights
- Conflict of Interest
- Assignment of the HAP Contract

- Written Notices
- Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the YHA. The owner must sign the HUD Tenancy Addendum with the prospective tenant, and the tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

### **13-II.C. HAP CONTRACT PAYMENTS**

#### **General**

During the term of the HAP contract, and subject to the provisions of the HAP contract, the YHA must make monthly HAP payments to the owner on behalf of the family, at the beginning of each month. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month.

The amount of the HAP payment is determined according to the policies described in Chapter 6, and is subject to change during the term of the HAP contract. The YHA must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by the YHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant, plus the YHA HAP payment, should be equal to the rent specified in the lease (the rent to owner).

The family is not responsible for payment of the HAP payment, and the YHA is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the total rent to the owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from the YHA, the excess amount must be returned immediately. If the YHA determines that the owner is not entitled to all or a portion of the HAP, the YHA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract.

### **Owner Certification of Compliance**

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from the YHA, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner’s knowledge, the family resides in the unit as the family’s only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

### **Late HAP Payments [24 CFR 982.451(a)(5)]**

The YHA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for penalties if the YHA fails to make the HAP payment on time.

Penalties for late HAP payments can only be imposed if 1) the penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants; 2) it is the owner’s normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the owner charges the assisted family for late payment of the family’s share of the rent.

The YHA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the YHA’s control. In addition, late payment penalties are not required if the YHA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

### **Termination of HAP Payments [24 CFR 982.311(b)]**

The YHA must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the YHA must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

YHA Policy

The owner must inform the YHA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform the YHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide the YHA with a copy of such judgment or determination.

After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, the YHA will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform the YHA of the date when the family actually moves from the unit or the family is physically evicted from the unit.

**13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453]**

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS
- If the owner has violated any obligation under any other HAP contract under Section 8
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If the YHA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

The YHA rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination the HAP contract. The YHA may also obtain additional relief by judicial order or action.

The YHA must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. The YHA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

YHA Policy

Before the YHA invokes a remedy against an owner, the YHA will evaluate all information and documents available to determine if the contract has been breached.

If relevant, the YHA will conduct an audit of the owner's records pertaining to the tenancy or unit.

If it is determined that the owner has breached the contract, the YHA will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

### **13-II.E. HAP CONTRACT TERM AND TERMINATIONS**

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- The YHA terminates the HAP contract;
- The YHA terminates assistance for the family;
- The family moves from the assisted unit. In this situation, the owner is entitled to keep the housing assistance payment for the month when the family moves out of the unit.
- 180 calendar days have elapsed since the YHA made the last housing assistance payment to the owner;
- The family is absent from the unit for longer than the maximum period permitted by the YHA;
- The Annual Contributions Contract (ACC) between the YHA and HUD expires
- The YHA elects to terminate the HAP contract.

#### YHA Policy

The YHA may elect to terminate the HAP contract in each of the following situations:

Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];

The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see chapter 8;

The unit does not meet HQS [24 CFR 982.404] – see chapter 8;

The family breaks up [HUD Form 52641] – see chapter 3;

The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If the YHA terminates the HAP contract, the YHA must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV Guidebook pg.15-4].

#### YHA Policy

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the YHA gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to the YHA any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

### **13-ILF. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]**

The HAP contract cannot be assigned to a new owner without the prior written consent of the YHA.

An owner under a HAP contract must notify the YHA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the YHA.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that the YHA finds acceptable. The new owner must provide the YHA with a copy of the executed agreement.

#### YHA Policy

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

The YHA must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract. The YHA reserves the right to request closing documents, tax receipts, or any other relevant documentation necessary to validate the transfer of name.

Within 10 business days of receiving the owner's request, the YHA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to the YHA that includes:

A copy of the escrow statement or other document showing the transfer of title and recorded deed;

A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;

Copy of management agreement in lieu of owner information;

The effective date of the HAP contract assignment;

A written agreement to comply with the terms of the HAP contract; and

Confirmation that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the YHA will terminate the HAP contract with the old owner.

If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, the YHA will process the leasing in accordance with the policies in Chapter 9.

### **13-II.G. PROTECTING HCV TENANT AT FORECLOSURE ACTION [PIH 2010-44]**

Section 703 of the PTFA amends the statute governing the Section 8 program (Section 8(o) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(o)), by revising section 8(o)(7)(C) (42 U.S.C. 1437f(o)(7)(C)) to require that each HAP contract include the following additional requirements on the owner:

- Shall provide that during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, ... and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner—
  - Will occupy the unit as a primary residence; and
  - Has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.

Additionally, Section 703 of the PTFA revises section 8(o)(7)(F) (42 U.S.C. 1437f(o)(7)(F)), to add the language:

- May include any addenda required by the Secretary to set forth the provisions of this subsection. In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the

provisions related to foreclosure in subparagraph (C) shall not affect any State or local law that provides longer time periods or other additional protections for tenants.

Under these new statutory provisions, the immediate successor in interest, which is the party gaining ownership through a foreclosure sale, becomes subject to the HAP contract, as also revised by statute, and there must be “good cause” other than vacating the property prior to sale in order to terminate the existing tenancy.

Foreclosed properties in which Section 8 voucher recipients reside must comply with Sections 702 and 703 of the PTFA. If the immediate successor-in-interest will use the unit as a primary residence, the lease can be terminated effective on the date of the sale. In such cases, the tenant is still entitled to a minimum of 90 days notice to vacate. Section 702 is discussed in more detail in PIH Notice 2009-17. These statutory provisions sunset on December 31, 2014.

If a YHA learns that the property is in foreclosure, the YHA must:

1. Make all reasonable efforts to determine the status of the foreclosure and ownership of the property. This information can most likely be obtained through information that has been sent to the tenant notifying them of the foreclosure, and possibly in a 90 day notice to vacate. Additionally, YHA may review legal notices in the local newspaper or the local government’s website to keep apprised of foreclosure actions initiated against owners of HCV assisted properties.
2. Continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract. With the exception of HUD-insured mortgages or loans, defaulting on a mortgage/loan is not a breach of the HAP contract.
3. Attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. The written agreement should include a request for owner information such as a Tax Identification Number, and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is nevertheless effective by operation of law.
4. Inform the tenant that they must continue to pay rent in accordance with the lease, and if the successor in interest refuses to accept payment or cannot be identified, the tenant should pay the rent into escrow, because failure to pay rent may constitute an independent ground for eviction.
5. If the YHA is unable to make HAP payments to the successor in interest due to: (1) An action or inaction by the successor in interest that prevents such payments, including the rejection of payments or the failure of the successor to maintain the property in accordance with Housing Quality Standards (HQS); or (2) An inability to identify the successor, the YHA should inform the family of this. In order to ensure adequate protection of the tenant’s rights under the statutory authority as well as enforcing performance of the successor in interest under the HAP contract, the YHA should refer tenants, as services are needed, to the local Legal Aid Office.

The YHA must make reasonable inquiries to determine whether the unit, in addition to having a tenant receiving HCV assistance, will be (or has been) assisted under the Neighborhood Stabilization Program (NSP). The PHA may inquire with the applicable units of local government to determine if properties occupied by Section 8 participants are under consideration for the NSP program.

In cases where the units have received assistance under the NSP, the YHA may use the funds that would have been used to pay the rent for other purposes. These other purposes include:

1. To pay utilities that are the owner's responsibility under the lease or applicable law, after taking reasonable steps to notify the owner that it intends to pay utilities rather than make payments to the owner;
  - The YHA is *not* required to notify the owner before making a utility payment if the unit has been or will be rendered uninhabitable by the termination or threat of termination of service. In that case, the YHA will notify the owner within a reasonable time after making the payment.
2. To pay the families moving costs, including security deposit costs.
3. Any funds that remain after use for these authorized purposes must only be used for housing assistance payments.

## Chapter 14

### PROGRAM INTEGRITY

#### INTRODUCTION

The YHA is committed to ensuring that subsidy funds made available to the YHA are spent in accordance with HUD requirements.

This chapter covers HUD and YHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents YHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the YHA must and may take when errors or program abuses are found.

#### PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

##### 14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

###### YHA Policy

The YHA anticipates that the vast majority of families, owners, and YHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure the YHA's HCV program is administered effectively and according to the highest ethical and legal standards, the YHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The YHA will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

The YHA will provide each applicant and participant with the publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.

The YHA will place a warning statement about the penalties for fraud (as described in the False Statement Act, U.S.C. 1001 and 1010) on key YHA forms and form letters that request information from a family or owner.

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YHA staff will be required to review and explain the contents of all HUD- and YHA-required forms prior to requesting family member signatures.

The YHA will require first-time owners (or their agents) to participate in a briefing session on HAP contract requirements.

The YHA will provide each YHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

### **14-I.B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, the YHA will use a variety of activities to detect errors and program abuse.

#### **Quality Control and Analysis of Data**

Under the Section 8 Management Assessment Program (SEMAP), HUD requires the YHA to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

#### **YHA Policy**

In addition to the SEMAP quality control requirements, the YHA will employ a variety of methods to detect errors and program abuse.

The YHA routinely will use available sources of enterprise income verification to compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

The YHA will compare family-reported income and expenditures to detect possible unreported income.

#### **Independent Audits and HUD Monitoring**

OMB Circular A-133 requires all HACHSs that expend \$500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of YHA activities and notifies the YHA of errors and potential cases of program abuse.

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YHA Policy

The YHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the YHA's error detection and abuse prevention efforts.

**Individual Reporting of Possible Errors and Program Abuse**

YHA Policy

The YHA will encourage staff, program participants, and the public to report possible program abuse.

**14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE**

**When the YHA Will Investigate**

YHA Policy

The YHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the YHA to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The YHA will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

**YHA Investigation Procedures**

YHA Policy

When the YHA has determined that an allegation or referral warrants follow-up, either the staff person who is responsible for the file or a person designated by the Executive Director or Deputy Director to monitor the program compliance will conduct the investigation. The steps taken will depend upon the nature of the allegation and may include, but are not limited to, the items listed below.

- **EIV.** In all cases EIV will be updated and reviewed, including income discrepancy reports
- **Credit Bureau Inquiries.** In cases involving previously unreported income sources, a CBI inquiry may be made to determine if there is financial activity that conflicts with the reported income of the family.
- **Verification of Credit.** In cases where the financial activity conflicts with file data, a Verification of Credit form may be mailed to the creditor in order to determine the unreported income source.

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- **Employers and Ex-Employers.** Employers or ex-employers may be contacted to verify wages that may have been previously undisclosed or misreported.
  - **Neighbors/Witnesses.** Neighbors and/or other witnesses may be interviewed who are believed to have direct or indirect knowledge of facts pertaining to the YHA's review.
  - **Other Agencies.** Investigators, caseworkers or representatives of other benefit agencies may be contacted.
  - **Public Records.** If relevant, the YHA may review public records kept in any jurisdictional courthouse. Examples of public records which may be checked are: real estate, marriage, divorce, Uniform Commercial Code financing statements, voter registration, judgments, court or police records, state wage records, utility records, and postal records.
  - **Head of Household or Family Members.** The YHA may discuss the allegation (or details thereof) with the Head of Household or family member by scheduling an appointment at the YHA office. Under no circumstances will inflammatory language, accusation, or any unprofessional conduct or language, on the part of either the family or the YHA representative, be tolerated by the management. An additional staff person may be required to attend such interviews.

### **Consent to Release of Information [24 CFR 982.516]**

The YHA may investigate possible instances of error or abuse using all available YHA and public records. If necessary, the YHA will require HCV families to give consent to the release of additional information.

### **Analysis and Findings**

#### YHA Policy

The YHA will base its evaluation on a preponderance of the evidence collected during its investigation.

*Preponderance of the evidence* is defined as evidence which is greater weight of the evidence; that is, evidence that you believe because it outweighs or over-balances in your mind the evidence opposed to it. A preponderance means evidence that is more probable, more persuasive, or of greater probative value. It is the quality of the evidence that must be weighed. Quality may, or may not, be identical with quantity (the greater number of witnesses).

For each investigation the YHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the YHA, and (3) what corrective measures or penalties will be assessed.

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### **Consideration of Remedies**

All errors and instances of program abuse must be corrected prospectively. Whether the YHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

#### YHA Policy

In the case of family-caused errors or program abuse, the YHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, the YHA will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation has occurred, and (3) the effects of a particular remedy on family members who were not involved in the offense.

### **Notice and Appeals**

#### YHA Policy

The YHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the YHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through the informal review or hearing process, if applicable.

## **PART II: CORRECTIVE MEASURES AND PENALTIES**

### **14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS**

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

#### **Corrections**

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the YHA must promptly correct the HAP, family share, and any utility reimbursement prospectively.

#### YHA Policy

Increases in the family share will be implemented only after the family has received 30 days notice, unless the error was caused by the family.

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Any decreases in family share will become effective the first of the month following the discovery of the error.

## **Reimbursement**

Whether the family or owner is required to reimburse the YHA or the YHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

### **14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE**

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the YHA to use incorrect information provided by a third party.

#### **Family Reimbursement to YHA [HCV GB pp. 22-12 to 22-13]**

##### YHA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The YHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, the YHA will terminate the family's assistance in accordance with the policies in Chapter 12.

#### **YHA Reimbursement to Family [HCV GB p. 22-12]**

##### YHA Policy

The YHA will not reimburse the family for any underpayment of assistance when the underpayment clearly is caused by the family.

## **Prohibited Actions**

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to the YHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

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YHA Policy

Any of the following will be considered evidence of family program abuse, including but not limited to:

Payment to the owner in excess of amounts authorized by the YHA for rent, security deposit, and additional services

Offering bribes or illegal gratuities to the YHA Board of Commissioners, employees, contractors, or other YHA representatives

Offering payments or other incentives to the owner or a third party as an inducement for the third party to make false or misleading statements to the YHA on the family's behalf

Use of a false name or the use of falsified, forged, or altered documents

Intentional misreporting of family information or circumstances (e.g. income, family composition)

Omitted facts that were obviously known by a family member (e.g., not reporting employment income)

Admission of program abuse by an adult family member

The YHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

### **Penalties for Program Abuse**

In the case of program abuse caused by a family the YHA may, at its discretion, impose any of the following remedies.

- The YHA may require the family to repay excess subsidy amounts paid by the YHA, as described earlier in this section.
- The YHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 12 (for participants).
- The YHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- The YHA may refer the family for state or federal criminal prosecution as described in section 14-II.E.

### **14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE**

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

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An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

### **Owner Reimbursement to the YHA**

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the YHA any excess subsidy received. The YHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the YHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

#### YHA Policy

In cases where the owner has received excess subsidy, the YHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

### **Prohibited Owner Actions**

An owner participating in the HCV program must not:

- Make any false statement to the YHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.453(a)(3)] including:

#### YHA Policy

Any of the following will be considered evidence of owner program abuse:

Charging the family rent above or below the amount specified by the YHA

Charging a security deposit other than that specified in the family's lease

Charging the family for services that are provided to unassisted tenants at no extra charge

Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit

Knowingly accepting incorrect or excess housing assistance payments

Offering bribes or illegal gratuities to the YHA Board of Commissioners, employees, contractors, or other YHA representatives

Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the YHA

Residing in the unit with an assisted family

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## **Remedies and Penalties**

When the YHA determines that the owner has committed program abuse, the YHA may take any of the following actions:

- Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in Chapter 16.
- Terminate the HAP contract (See Chapter 13).
- Bar the owner from future participation in any YHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

### **14-II.D. YHA-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of YHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a YHA staff member that resulted in under payment of housing assistance to a participant/family. Additional standards of conduct and resulting consequences are identified in the YHA personnel policy manual.

Incorrect subsidy determinations by YHA staff include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

Upon discovery, YHA will reimburse a participant/family for any underpayment of subsidy resulting from error on the part of a staff person.

### **Repayment to the YHA**

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by YHA staff [HCV GB. 22-12].

### **YHA Reimbursement to Family or Owner**

The YHA must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from the YHA's administrative fee reserves [HCV GB p. 22-12].

### **Prohibited Activities**

#### YHA Policy

Any of the following will be considered evidence of program abuse by YHA staff:

Failing to comply with any HCV program requirements for personal gain

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Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant, or owner

Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to the YHA

Disclosing confidential or proprietary information to outside parties

Gaining profit as a result of insider knowledge of YHA activities, policies, or practices

Misappropriating or misusing HCV funds

Destroying, concealing, removing, or inappropriately using any records related to the HCV program

Committing any other corrupt or criminal act in connection with any federal housing program

#### **14-II.E. CRIMINAL PROSECUTION**

##### YHA Policy

When the YHA determines that program abuse by an owner, family, or YHA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the YHA will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

#### **14-II.F. FRAUD AND PROGRAM ABUSE RECOVERIES**

The YHA may retain a portion of program fraud losses that the YHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The YHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits the YHA to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that the YHA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.

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If HUD incurs costs on behalf of the YHA related to the collection, these costs must be deducted from the amount retained by the YHA.

## Chapter 15

### SPECIAL HOUSING TYPES

[24 CFR 982 Subpart M]

#### INTRODUCTION

The YHA may permit a family to use any of the special housing types. However, the YHA is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that YHA must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. The YHA also may limit the number of families who receive HCV assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types.

#### YHA Policy

Families will not be permitted to use any special housing types, unless use is needed as a reasonable accommodation so the program is readily accessible to a person with disabilities.

At the current time, the YHA does administer the HCV Homeownership Program.

This chapter consists of the following seven parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types.

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes (including manufactured home space rental)

Part VII: Homeownership

#### PART I. SINGLE ROOM OCCUPANCY

[24 CFR 982.602 through 982.605]

##### 15-I.A. OVERVIEW

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

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When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

### **15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for SRO housing is 75 percent of the 0-bedroom payment standard amount on the YHA payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

### **15-I.C. HOUSING QUALITY STANDARDS (HQS)**

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

- *Access:* Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety:* All SRO facilities must have a sprinkler system that protects major spaces. “Major spaces” are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 CFR 982.605].

- *Sanitary Facilities:* At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- *Space and Security:* An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

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## **PART II. CONGREGATE HOUSING**

[24 CFR 982.606 through 982.609]

### **15-II.A. OVERVIEW**

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by the YHA, a family member or live-in aide may reside with the elderly person or person with disabilities. The YHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

### **15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), the YHA must use the payment standard for a 0-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), the YHA must use the 1-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

### **15-II.C. HOUSING QUALITY STANDARDS**

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

Congregate housing must have (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.

The housing quality standards applicable to lead-based paint do not apply.

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### **PART III. GROUP HOME**

[24 CFR 982.610 through 982.614 and HCV GB p. 7-4]

#### **15-III.A. OVERVIEW**

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by the YHA, a live-in aide may live in the group home with a person with disabilities. The YHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

#### **15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be 0- or 1-bedroom, depending on the YHA subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the group home size. The prorata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the prorata share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorata portion of the reasonable rent for the group home. In determining reasonable rent, the YHA should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

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### **15-III.C. HOUSING QUALITY STANDARDS**

HQS requirements described in Chapter 8 apply to group homes except for the requirements stated below.

- *Sanitary Facilities:* A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service:* Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- *Space and Security:* Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.
- *Structure and Material:* To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- *Site and Neighborhood:* Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
  - Dangerous walks or steps
  - Instability
  - Flooding, poor drainage
  - Septic tank back-ups
  - Sewage hazards
  - Mud slides
  - Abnormal air pollution
  - Smoke or dust
  - Excessive noise
  - Vibrations or vehicular traffic
  - Excessive accumulations of trash
  - Vermin or rodent infestation, and
  - Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

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**PART IV. SHARED HOUSING**

[24 CFR 982.615 through 982.618]

**15-IV.I. OVERVIEW**

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by the YHA, a live-in aide may reside with the family to care for a person with disabilities. The YHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

**15-IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the shared housing unit size.

The prorata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private space by the total number of bedrooms in the unit.

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the prorata share of the utility allowance for the shared housing unit.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, the YHA should consider whether sanitary and food preparation areas are private or shared.

**15-IV.C. HOUSING QUALITY STANDARDS**

The YHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family:* Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.

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- *Space and Security:* The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A 0-bedroom or 1-bedroom unit may not be used for shared housing.

## **PART V. COOPERATIVE HOUSING**

[24 CFR 982.619]

### **15-V.A. OVERVIEW**

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged “rent” a cooperative member is charged a “carrying charge.”

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

### **15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member’s share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

### **15-V.C. HOUSING QUALITY STANDARDS**

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

## **PART VI. MANUFACTURED HOMES**

[24 CFR 982.620 through 982.624]

### **15-VI.A. OVERVIEW**

A manufactured home is a manufactured structure, transportable in one or more parts, that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

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(1) A family can choose to rent a manufactured home already installed on a space and the YHA must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. YHA may, but are not required to, provide assistance for such families.

## **15-VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE**

### **Family Income**

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

### **Lease and HAP Contract**

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

## **15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

### **Payment Standards**

The FMR for a manufactured home space is generally 40 percent of the published FMR for a 2-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. The YHA may establish a payment standard for manufactured home spaces that is between 90-110 percent of the FMR for manufactured home spaces.

### **Utility Allowance**

The YHA must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

### **Space Rent**

The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities.

### **Housing Assistance Payment**

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the (gross) manufactured home space rent minus the TTP.

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**Rent Reasonableness**

Initially, and annually thereafter the YHA must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. The YHA must consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly HAP check, the owner certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the manufactured home park or elsewhere.

**15-VI.D. HOUSING QUALITY STANDARDS**

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

***Manufactured Home Tie-Down***

A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

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## **PART VII. HOMEOWNERSHIP**

[24 CFR 982.625 through 982.643]

**Currently- the YHA does administer the HCV Homeownership Program.**

### **15-VII.A. OVERVIEW [24 CFR 982.625]**

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family. A family assisted under this option will be an existing participant in the HCV program for one year at YHA, and must be in good standing. The YHA has demonstrated the capacity to operate a successful HCV homeownership program as defined by the regulations and will use financial instruments that are recognized and accepted by governmental agencies or the secondary market of Fannie Mae, Freddie Mac or FHA.

There is only one form of homeownership assistance currently available that YHA may offer under this option and that is monthly homeownership assistance payments.

The YHA may offer homeownership assistance if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. It is the sole responsibility of the YHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The YHA must determine what is reasonable based on the specific circumstances and individual needs of the person with a disability.

The YHA will review request for reasonable accommodations and may approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

Criteria to be used to demonstrate the YHA capacity:

- The YHA requires the financing for purchase of a home under its Section 8 homeownership program complies with secondary mortgage market requirements; or complies with generally accepted private sector underwriting standards.
- The YHA reserves the right to impose additional criteria on the financial instruments, depending on family circumstances or changes in the homeownership market.

The YHA will offer only the monthly homeownership assistance payments at this time since the downpayment assistance portion of the regulation cannot be implemented until Congress provides an additional appropriation. No such appropriation has been made available to date.

### **15-VII.B. FAMILY ELIGIBILITY [24 CFR 982.627]**

The family must meet all of the requirements listed below before the commencement of homeownership assistance. The YHA may also establish additional initial requirements as long as they are described in the YHA administrative plan.

- The family must be a current participant in the program and been a participant for at least one year in good standing.
- The family must qualify as a first-time homeowner, or may be a cooperative member.

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- The non-disabled/non-elderly and elderly families must meet the Federal minimum income requirement of \$14,500. The family must have a gross annual income equal to the Federal minimum wage multiplied by 2,000, based on the income of adult family members who will own the home. Welfare assistance cannot be used to determine the minimum income requirement for non-disabled/non-elderly families.
  - For disabled families, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
  - For elderly or disabled families, welfare assistance payments for adult family members who will own the home will be included in determining whether the family meets the minimum income requirement. It will not be included for other families.
  - The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (not less than an average of 30 hours per week); and has been continuously so employed during the year before commencement of homeownership assistance for the family. Continuously employed is defined as if the break in employment does not exceed two months.
  - The employment requirement does not apply to elderly and disabled families. In addition, if a family, other than an elderly or disabled family includes a person with disabilities, the YHA must grant an exemption from the employment requirement if the YHA determines that it is needed as a reasonable accommodation.
  - The family has not previously defaulted on a mortgage securing debt to purchase a home under the homeownership option
  - Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.
  - Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with 24 CFR 982.631(c).
  - The family has had no family-caused violations of HUD's Housing Quality Standards within the past year.
  - The family does not owe money to the YHA or any other PHA.
  - The family has not committed any serious or repeated violations of a YHA-assisted lease within the past year.
  - The family is in good standing with all terms of the family obligations and has been so for at least one year.

#### **15-VII.C. SELECTION OF FAMILIES [24 CFR 982.626]**

Unless otherwise provided (under the homeownership option), the YHA will limit homeownership assistance to participant families or purposes defined by the YHA, and may

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prescribe additional requirements for commencement of homeownership assistance for a family. The YHA will try to administer up to 5 new homeownership units per year.

The YHA may do more than 5 should the need be demonstrated and YHA has more qualified families requesting the program.

### **YHA Policy**

Families who are participating in the YHA Family Self-Sufficiency program and nearing graduation or have graduated from the FSS program will be given preference over other families.

Families who are participating in the IDA accounts and have accumulated the necessary funds for downpayment and closing will be given a preference over other families.

Within preference and non-preference categories, families will be selected according to the date and time of their application for participating in the homeownership option approved by the YHA.

All families must meet eligibility requirements as defined in Section 15-VII.B of this plan.

### **15-VII.D. ELIGIBLE UNITS [24 CFR 982.628]**

In order for a unit to be eligible, the YHA must determine that the unit satisfies all of the following requirements:

- The unit must meet HUD’s “eligible housing” requirements. The unit may not be any of the following:
  - A current public housing or Indian housing rental unit;
  - A unit receiving Section 8 project-based assistance;
  - A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services;
  - A college or other school dormitory;
  - On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be under construction or already exist at the time the family enters into the contract of sale. Under construction requires that at least the footers are poured and in place, or meet the qualifications under new construction.
- The unit must be a one-unit property or a single dwelling unit in a cooperative or condominium.
- The unit must have been inspected by the YHA for HQS and also by an independent inspector designated by the family for the systems, structure and other requirements for the independent inspection.
- The unit must meet Housing Quality Standards prior to the time of closing.

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- For a unit where the family will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.
  - For YHA-owned units all of the following conditions must be satisfied:
    - The YHA informs the family, both orally and in writing, that the family has the right to purchase any eligible unit and a YHA-owned unit is freely selected by the family without YHA pressure or steering;
    - The unit is not an ineligible housing unit;
    - The YHA obtains the services of an independent agency to inspect the unit for compliance with HQS, review the independent inspection report, review the contract of sale, determine the reasonableness of the sales price and any YHA provided financing. All of these actions must be completed in accordance with program requirements. The YHA will obtain the services of a neighboring PHA or the statewide HCV administering agency to perform this service, so long as the independent agency is operating a HCV Homeownership Program

The YHA must not approve the unit if the YHA has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

#### **15-VI.E. ADDITIONAL YHA REQUIREMENTS FOR SEARCH AND PURCHASE [24 CFR 982.629]**

It is the family's responsibility to find a home that meets the criteria for voucher homeownership assistance. The YHA has established the maximum time that will be allowed for a family to locate and purchase a home, and will require the family to report on their progress in finding and purchasing a home. If the family is unable to purchase a home within the maximum time established by the YHA, the YHA provide additional time for the family to search. Documentation requesting the additional time will be provided b the family.

#### **YHA POLICY**

After the family is allowed to start the search for a unit, the family will be allowed 120 days to identify a unit and submit a sales contract to the YHA for review. The family will be allowed an additional 120 days to close on the home. Should the unit not close, the family may still utilize the voucher for rental assistance. YHA may grant extensions to either of these periods for good cause. The length of the extension(s) will be determined on a case-by-case, but in no case will an extension exceed a total of 240 days. The maximum amount of time a family will given to locate and complete the purchase of a home under the homeownership option is 365 days.

During these periods, the family will continue to receive HCV rental assistance in accordance with any applicable lease and HAP contract until the family vacates the rental unit for its purchased home.

All requests for extensions must be submitted in writing to the YHA prior to the expiration of the period for which the extension is being requested. The YHA will approve or disapprove the extension request within 10 business days. The family will be notified of the YHA 's decision in writing.

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The family will be required to report their progress on locating and purchasing a home to the YHA every 30 days until the home is purchased.

If the participant family cannot complete the purchase of a unit within the maximum required time frame, and is not receiving rental assistance under a HAP contract at the time the search and purchase time period expires, the family will be allowed to lease a unit and remain in the rental program, so long as they are still in good standing with the program.

Following the purchase, YHA may conduct additional Housing Quality Standards (HQS) inspections at least every other year. The YHA will continue to conduct inspections on the unit if it determines that the family is not keeping the premises HQS compliant or there is a complaint that the unit is not HQS compliant.

#### **15-VII.F. HOMEOWNERSHIP COUNSELING [24 CFR 982.630]**

Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by the YHA. YHA or its counseling partner will be required as a minimum the following pre-assistance counseling program:

- Home maintenance (including care of the grounds);
- Budgeting and money management;
- Credit counseling;
- How to negotiate the purchase price of a home;
- How to obtain homeownership financing and loan pre-approvals, including a description of types of financing that may be available, and the pros and cons of different types of financing;
- How to find a home, including information about homeownership opportunities, schools, and transportation in the YHA jurisdiction;
- Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;
- Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and
- Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

The YHA will adapt the subjects covered in pre-assistance counseling (as listed) to local circumstances and the needs of individual families. The YHA will further require families to attend one-on-one counseling to make sure they understand the obligations and are fully prepared to become homeowners.

The YHA or its counseling partner will offer additional counseling after commencement of homeownership assistance (ongoing counseling). This is part of the program and attendance remains a participant's obligation in order to continue to be assisted by the YHA.

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If the YHA does not use a HUD-approved housing counseling agency to provide the counseling, the YHA will ensure that its counseling program is consistent with the counseling provided under HUD's Housing Counseling program.

### **YHA POLICY**

The YHA will require all families to attend and complete post-purchase (technical assistance) ongoing homeownership counseling.

All families wishing to participate in the Homeownership Program must complete a minimum of the regular eight hours of pre-purchase homeownership counseling and any individually required counseling sessions.

### **15-VII.G. HOME INSPECTIONS, CONTRACT OF SALE, AND YHA DISAPPROVAL OF SELLER [24 CFR 982.631]**

#### **Home Inspections**

The YHA may not commence monthly homeownership assistance payments for a family until the YHA has inspected the unit and has determined that the unit passes HQS.

An independent professional inspector selected by and paid for by the family must also inspect the unit. The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components. The YHA will require the independent inspectors to be only those inspectors that are being used by the participating lenders that are at least meeting the financial requirements as set forth by YHA.

The YHA may not require the family to use an independent inspector selected by the YHA. The independent inspector may not be a YHA employee or contractor, or other person under control of the YHA. However, the YHA has established standards for qualification of inspectors selected by families under the homeownership option.

The YHA may disapprove a unit for assistance based on information in the independent inspector's report, even if the unit was found to comply with HQS.

#### **YHA POLICY**

When a family locates a home they wish to purchase and submits a copy of their purchase offer/contract, the YHA will conduct a housing quality standards (HQS) inspection within 10 business days. The YHA will prioritize the HCV HO inspection. Any items found not to meet HQS must be repaired before the unit can be determined eligible for the homeownership program and before the closing date.

The YHA will also require a home inspection as required by HUD. The family must hire an independent professional inspector, whose report must be submitted to YHA for review. The inspector must be a member of the American Society of Home Inspectors (ASHI) or other recognized professional society, or a licensed engineer, or a standard that is readily accepted by the local lending community that is participating in the HCV Homeownership Program. The inspector may not be a YHA employee.

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The YHA will review the professional report in 5 days and based on the presence of major physical problems, the YHA may disapprove the purchase of the home. If the YHA disapproves the purchase of a home, the family will be notified in writing of the reasons for the disapproval.

### **Contract of Sale**

Before commencement of monthly homeownership assistance payments, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give the YHA a copy of the contract of sale. The contract of sale must:

- Specify the price and other terms of sale by the seller to the purchaser;
- Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by an independent inspector selected by the purchaser;
- Provide for an HQS inspection;
- Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory to the purchaser;
- Provide the purchaser is not obligated unless the necessary financial mortgage can be obtained;
- Provide that the purchaser is not obligated to pay for any necessary repairs; and
- Provide that the conditions are acceptable to the YHA.

### **Disapproval of a Seller**

In its administrative discretion, the YHA may deny approval of a seller for the same reasons a YHA may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)]. The seller cannot be limited denial process (LDP) or otherwise not capable of entering into contractual conditions as set forth by HUD.

### **15-VII.H. FINANCING [24 CFR 982.632]**

The YHA has established requirements for financing purchase of a home under the homeownership option. This may include requirements concerning qualification of lenders, terms of financing, restrictions concerning debt secured by the home, lender qualifications, loan terms, and affordability of the debt. The YHA established policies describing these requirements are contained in the administrative plan.

YHA may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

### **YHA POLICY**

As a check against predatory lending and acceptable lending terms, the YHA will review the financing and refinancing of each purchase transaction, including estimated closing cost. The YHA will not approve loans for features, such as balloon payments, adjustable rate mortgages, seller financing, and unusually high interest rates. The YHA will not approve any loans that contain predatory practices. The YHA also will not approve "seller financing" or "owner held"

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mortgages. Beyond these basic criteria, the YHA will rely on the lenders or the secondary market to determine the loan that will be affordable to program participants.

The mortgage the family applies for may require a minimum down of at least 3% of the sales price with 1% of the down payment coming from the purchaser's personal funds. The YHA will not require the family have more than the minimum of 1% of their money in the transaction. However, in cases where a lender is requiring a larger amount, the family must be held to the underwriting guidelines set by their lending institution.

The YHA will approve a family's request to utilize its Family Self Sufficiency escrow account for down payment and/or closing cost when purchasing a unit under the HCV homeownership option.

### **15-VII.I. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS [24 CFR 982.633]**

Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, the YHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to the YHA the HCV homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

The family must comply with the following obligations:

- The family must comply with the terms of the mortgage securing debt incurred to purchase the home, or any refinancing of such debt.
- The family may not convey or transfer ownership of the home, except for purposes of financing, refinancing, or pending settlement of the estate of a deceased family member. Use and occupancy of the home are subject to 24 CFR 982.551 (h) and (i).
- The family must supply information to the YHA or HUD as specified in 24 CFR 982.551(b). The family must further supply any information required by the YHA or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.
- The family must notify the YHA before moving out of the home.
- The family must notify the YHA if the family defaults on the mortgage used to purchase the home.
- No family member may have any ownership interest in any other residential property.
- The family must comply with the obligations of a participant family described in 24 CFR 982.551, except for the following provisions which do not apply to assistance under the homeownership option: 24 CFR 982.551(c), (d), (e), (f), (g) and (j).
- The family will comply with all post assistance counseling requirements.

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- The family will obtain YHA approval on all financing and refinancing and provide YHA with documentation of the use of the equity funds, so long as they are being assisted under the program.
  - For non-elderly/non-disabled families; the family shall maintain at least one adult in the household that maintains full time employment, which is considered at least 30 hours per week. The YHA will provide for temporary hardship in case of lay-offs or other unusual circumstances in the local economy.
  - The family must, at annual reexamination, document that the family is current on mortgage, insurance, taxes and utility payments.
  - The family will be required to maintain a maintenance and major allowance account equal to the YHA's allowance in the homeownership expense calculation for major and maintenance expense less any allowable withdraws.

#### **15-VII.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634]**

Except in the case of a family that qualifies as an elderly or disabled family, other family members (described below) shall not receive homeownership assistance for more than:

- Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or
- Ten years, in all other cases.

The maximum term described above applies to any member of the family who:

- Has an ownership interest in the unit during the time that homeownership payments are made; or
- Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in this part.

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**15-VII.K. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES [24 CFR 982.635]**

The monthly homeownership assistance payment is the lower of: the voucher payment standard minus the total tenant payment, or the monthly homeownership expenses minus the total tenant payment.

In determining the amount of the homeownership assistance payment, the YHA will use the same payment standard schedule, payment standard amounts, and subsidy standards as those described in elsewhere in this plan for the Housing Choice Voucher program.

The YHA may pay the homeownership assistance payments directly to the family, or at the YHA discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, the YHA must pay the excess directly to the family.

Homeownership assistance for a family terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the family.

The YHA must adopt policies for determining the amount of homeownership expenses to be allowed by the YHA in accordance with HUD requirements.

**YHA POLICY**

The YHA housing assistance payment will be paid directly to the family unless directed otherwise by the lender. If YHA would make the payment to the family, it will be the family's responsibility to make the entire payments to the lender. The YHA may make the exception if the family requests the payment to be made directly to them, and this arrangement is acceptable to the mortgage company. If the assistance payment exceeds the amount due to the lender, the YHA must pay the excess directly to the family. The family, at its option, can also place these funds in an escrow account that can be used for repairs or other homeownership expenses.

The YHA will allow the following homeownership expenses:

**Monthly homeownership payment:** This includes principal and interest on initial mortgage debt, taxes, and insurance, and any mortgage insurance premium, if applicable.

**Utility Allowance:** The YHA utility allowance for the unit, based on the current HCV utility allowance schedule.

**Monthly maintenance allowance:** The monthly maintenance allowance will be the annual maintenance allowance, divided by twelve. The annual maintenance allowance will be set at \$600 at this time, subject to future adjustments.

**Monthly major repair/replacement allowance:** The monthly major repair/replacement allowance will be the annual major repair/replacement allowance divided by 12. The annual major repair/replacement allowance will be set at \$600 at this time, subject to future adjustments.

**Monthly co-op/condominium assessments or dues.** If applicable, the monthly amount of co-op or condominium association fees or operation and maintenance assessments.

**Monthly principal and interest on debt for handicap accessible improvements.** Principal and interest for major home repair, replacements, or improvements, if applicable.

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In determining expenses, YHA will use the following homeownership expenses (not including cooperatives) to only include amounts allowed by the YHA to cover:

- Principal and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home;
- Real estate taxes and public assessments on the home;
- Homeowner insurance;
- The YHA allowance for maintenance expenses;
- The YHA allowance for costs of major repairs and replacements;
- The YHA utility allowance for the home;
- Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the YHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person;
- Land lease payments where a family does not own fee title to the real property on which the home is located; [see 24 CFR 982.628(b)].
- For a condominium unit, condominium operating charges or maintenance fees assessed by the condominium homeowner association.

Homeownership expenses for a cooperative member may only include amounts allowed by the YHA to cover:

- The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home;
- Principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt;
- Home insurance;
- The YHA allowance for maintenance expenses;
- The YHA allowance for costs of major repairs and replacements;
- The YHA utility allowance for the home; and
- Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the YHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person.
- Cooperative operating charges or maintenance fees assessed by the cooperative homeowner association.

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**15-VII.L. PORTABILITY [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]**

Subject to the restrictions on portability included in HUD regulations and YHA policies, a family may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families. The receiving PHA may absorb the family into its voucher program, or bill the initial PHA.

The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial PHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the PHA.

**15-VII.M. MOVING WITH CONTINUED ASSISTANCE [24 CFR 982.637]**

A family receiving homeownership assistance may move with continued tenant-based assistance. The family may move with voucher rental assistance or with voucher homeownership assistance. Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home.

The YHA will deny permission to move to a new unit with continued voucher assistance as follows:

- Lack of funding to provide continued assistance.
- At any time, the YHA may deny permission to move with continued rental or homeownership assistance in accordance with 24 CFR 982.638, regarding denial or termination of assistance.
- In accordance with the YHA policy regarding number of moves within a 12-month period.

The YHA must deny the family permission to move to a new unit with continued voucher rental assistance if:

- The family defaulted on an FHA-insured mortgage; and
- The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and the family has moved, or will move, from the home within the period established or approved by HUD.

**YHA POLICY**

For families participating in the homeownership option, requests to move will be approved and/or denied in accordance with the YHA policies stated in Chapter 10.

The YHA may require additional counseling of any families who move with continued assistance.

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**15-VII.N. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638]**

At any time, the YHA may deny or terminate homeownership assistance in accordance with HCV program requirements in 24 CFR 982.552 (Grounds for denial or termination of assistance) or 24 CFR 982.553 (Crime by family members).

The YHA may also deny or terminate assistance for violation of participant obligations described in 24 CFR Parts 982.551 or 982.633.

The YHA must terminate voucher homeownership assistance for any member of family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt.

**YHA POLICY**

The YHA will terminate a family's homeownership assistance if the family violates any of the homeowner obligations, as well as for any of the reasons listed in the Statement of Homeownership Obligation Housing Choice Voucher Homeownership Program.

In making its decision to terminate homeownership assistance, the YHA will consider alternatives as described in Section 12-IIC and other factors described in Section 12-II D. Upon consideration of such alternatives and factors, the YHA may, on a case-by-case basis, choose not to terminate assistance.

Termination notices will be sent in accordance with the requirements and policies set forth in Section 12-IIE.

**15-VII.N.DEFAULT**

**YHA Policy**

If the family defaults on the home mortgage loan, the participant will not be able to use the homeownership voucher for rental housing but may reapply for the Section 8 waiting list, if the waiting list is open.

**15-VII.O.RECAPTURE**

**YHA Policy**

By regulation, YHA cannot recapture any of the HCV Homeownership assistance, unless there is an act of fraud.

**15-VII.Q.INFORMAL HEARING [24 CFR 982.555]**

An informal hearing will be provided for participants who are being terminated from the Program because of the family's action or failure to act as provided in 24 CFR 982.552. The rules and procedures set forth in the Administrative Plan, entitled "Informal Hearings," will apply.

## Chapter 16

### PROGRAM ADMINISTRATION

#### INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes YHA's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part IV: Owner or Family Debts to YHA. This part describes policies for recovery of monies that YHA has overpaid on behalf of families, or to owners, and describes the circumstances under which YHA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part V: Section 8 Management Assessment Program (SEMAP). This part describes what the SEMAP scores represent, how they are established, and how those scores affect YHA.

Part VI: Record-Keeping. All aspects of the program involve certain types of record keeping. This part outlines the privacy rights of applicants and participants and record retention policies YHA will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes YHA's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes YHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

#### **PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]**

YHA must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for YHA's fiscal year. If funds in the administrative fee reserve are not needed to cover YHA administrative expenses, YHA may use these funds for other housing purposes permitted by Federal, State and local law.

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Pursuant to 24 CFR 982.155, **YHA** maintains a single administrative fee reserve account for the Housing Choice Voucher (HCV) program. YHA must credit to the Administrative Fee Reserve the total of: (1) the amount by which program administrative fees (paid by HUD for YHA's fiscal year) exceed YHA program administrative expenses for the fiscal year; plus (2) interest earned on the administrative fee reserve. These reserves are referred to as unrestricted net asset (UNA) accounts.

Beginning with the Federal Fiscal Year (FFY) 2004 Appropriations Act, use of administrative fee reserves is restricted to activities related to the provision of Section 8 tenant based assistance, including related development activities. Accordingly, administrative fee reserves from FFY 2004 and subsequent funding periods (referred to as "post-2003" funds) are restricted to HCV activities even though under GAAP it is an "unrestricted" net asset. Administrative fee reserves remaining from funding periods prior to the FFY 2004 Appropriations Act (referred to as "pre-2004" funds) are restricted in use pursuant to 24 CFR 982.155(b)(1). Provisions for post-2003 and pre-2004 are discussed in PIH 2010-7.

This policy does not apply to PHA's approved for fungibility under a Moving to Work (MTW) agreement or under an agreement for Section 901 Disaster Assistance.

#### **Use of Administrative Fees**

The HCV program regulations at 24 CFR 982.152 provide that YHA administrative fees may only be used to cover costs incurred to perform YHA administrative responsibilities for the program in accordance with HUD regulations and requirements. **During the YHA's current fiscal year, any administrative fees received in that YHA fiscal year may only be used for this purpose.** When YHA's fiscal year ends, the amount by which the program administrative fees paid by HUD for YHA's fiscal year exceed YHA's program administrative expenses for the fiscal year become administrative fee reserves. The eligible uses of YHA's Administrative Fee Reserve are restricted as set forth below.

Note that if YHA lacks administrative fee reserves and needs to temporarily supplement the administrative fee provided by HUD with non-Federal, non-restricted funds in order to cover eligible HCV program administrative expenses, YHA may use subsequent administrative fees to reimburse the source of the non-Federal, non-restricted funding used as the temporary bridge to cover the HCV program administrative expenses. However, HCV administrative fees may never be loaned to another program in order to cover ineligible expenses, regardless of whether YHA intends to reimburse the HCV program at a later date.

**Pre-2004 Administrative Fee Reserves:** Any administrative fees funded prior to the FFY 2004 Appropriations Act remain subject to the regulatory requirements at 24 CFR 982.155(b)(1), which states:

- *The PHA must use funds in the administrative fee reserve to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. If funds in the administrative fee reserve are not needed to cover PHA administrative expenses (to the end of the last expiring funding increment under the consolidated ACC), the PHA*

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**may use these funds for other housing purposes permitted by State and local law. However, HUD may prohibit use of the funds for certain purposes.**

Due to the restrictions imposed by the FFY 2004 and subsequent appropriations, the use of administrative fee reserves for “other housing purposes permitted by State and local law” only applies to pre-2004 administrative fee reserves.

### **Post-2003 Administrative Fee Reserves**

Administrative fees funded from the FFY 2004 Appropriations Acts and subsequent appropriations require that administrative fee reserves provided from these appropriations shall only be used for activities related to the HCV Program, including related development activities. Examples of related development activities could include: unit modifications to HCV units to provide accessibility features or project-based voucher development costs. Any post-2003 administrative fees moved into the administrative fee reserve account at year end may not be used for “other housing purposes permitted by state and local law.”

As provided in 24 CFR 982.155 b(3), if the YHA has not adequately administered HCV requirements, HUD may prohibit use of funds in the administrative fee reserve, and may direct the YHA to use funds in the reserve to improve administration of the HCV program or to reimburse ineligible expenses. Post 2003 administrative fee reserves may not be used for Low-Rent Public Housing (PH) development activities or PH maintenance; may not cover PH funding shortfalls nor be loaned to other YHA programs.

### **General Depository Agreement**

Consistent with the Annual Contributions Contract (ACC) YHA must deposit all program funds in accordance with the terms of a General Depository Agreement. The General Depository Agreement Form HUD-51999 is executed between the YHA and the depository. The YHA may only withdraw deposited program receipts for use in connection with the program in accordance with HUD requirements.

The agreement with the depository institution must provide that if required under a written notice from HUD to the depository: (1) The depository must not permit any withdrawal of deposited funds by the YHA unless withdrawals by the YHA are expressly authorized by written notice from HUD to the depository. (2) The depository must permit withdrawals of deposited funds by HUD. If approved by HUD, the YHA may deposit under the depository agreement monies received or held by the YHA in connection with any contract between the YHA and HUD.

### **Reporting Requirements**

HUD requires YHA to report any unused Administrative Fees as Unrestricted Net Assets (equity) in the Financial Assessment Subsystem (FASS) under account 512.1 Unrestricted Net Assets, the associated assets net of related liabilities (111 Cash; 131 Investments) should be reported on the Financial Data Schedule as unrestricted. Previously, there was no requirement for YHA to segregate unrestricted net assets as pre-2004 and post-2003. As noted earlier, the YHA may use pre-2004 administrative fees *for other housing purposes permitted by State and*

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*local law*; while post-2003 fees are limited to HCV- related purposes. As a result, this separation requires reconciliation to ensure the proper accounting and use of administrative fees.

In order to track these reserves annually, beginning with the reporting period ending December 31, 2009, YHA must report post-2003 administrative fee reserves separately from pre-2004.

YHA must describe the reconciliation in the comments link showing balances from 2003 and previous years administrative fee reserves separately from amounts held as 2004 and subsequent years administrative fee reserves. This schedule must tie to the balances reflected in FDS Line 512 Unrestricted Net Assets, for the HCVP.

### **Use of HAP Funds**

HAP funding, which includes net restricted assets (NRA), may only be used for eligible HAP needs of rent, family self-sufficient escrow payments or utility reimbursements. **HAP shall not under any circumstances be used for any other purpose, such as to cover administrative expenses or be loaned, advanced or transferred (referred to as operating transfers due to/due from) to other component units or other programs such as Low Rent Public Housing.** Use of HAP for any purpose other than eligible HAP needs is violation of law, and such illegal uses or transfers will result in sanctions and possible breach of the ACC.

In instances where YHA is found to have misappropriated HAP funds by using the funds for any purpose other than valid HAP expenses for units up to the baseline, HUD will require the immediate return of the funds of the HAP. HUD may take action against YHA or any party that has used HAP funds for non-HAP purposes.

Requirements for accounting controls and cash management dictate separate accounting of HCV from public housing funds to avoid co-mingling or improper use of program funds.

### **Sanctions**

Improper use of HAP, NRA funds, administrative fees or administrative fee reserves is a non-compliance action that may be subject to administrative sanctions, possible breach of the ACC or other authorized corrective action.

If YHA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct YHA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses. HUD also may prohibit use of the funds for certain purposes. HUD requires YHA's Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

### **YHA Policy**

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements. Expenditures will not exceed \$10,000 per occurrence without the prior approval of YHA's Board of Commissioners.

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## **PART II: SETTING PROGRAM STANDARDS AND SCHEDULES**

### **16-II.A. OVERVIEW**

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow YHA to adapt the program to local conditions. This part discusses how YHA establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- *Payment Standards*, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and
- *Utility Allowances*, which specify how a family's payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

#### YHA Policy

Copies of the payment standard and utility allowance schedules are available for review in YHA's Administrative office during normal business hours.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

YHA will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

### **16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7, PIH 2009-44]**

The payment standard sets the maximum subsidy payment a family can receive from YHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions FMR are set at the 40th percentile of rents in the market area.

YHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within YHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, YHA may establish a single payment standard amount for the whole FMR area, or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, YHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

#### **Updating Payment Standards**

When HUD updates its FMR, YHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require YHA to make further adjustments if it determines that rent burdens for assisted families in YHA's jurisdiction are unacceptably high 24 CFR 982.503(g)].

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YHA Policy

YHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published. In addition to ensuring the payment standards are always within the “basic range” YHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability:** YHA will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. YHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

**Rent Burden of Participating Families:** Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, YHA will consider increasing the payment standard. In evaluating rent burdens, YHA will not include families renting a larger unit than their family unit size.

**Quality of Units Selected:** YHA will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

**Changes in Rent to Owner:** YHA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.

**Unit Availability:** YHA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

**Lease-up Time and Success Rate:** YHA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Changes to payment standard amounts will be effective on January 1<sup>st</sup> of every year unless, based on the proposed FMR, it appears that one or more of YHA’s current payment standard amounts will be outside the basic range when the final FMR are published. In that case, YHA payment standards will be effective October 1<sup>st</sup> instead of January 1<sup>st</sup>.

If YHA has already processed reexaminations that will be effective on or after October 1<sup>st</sup>, and the effective date of the payment standards is October 1<sup>st</sup>, YHA will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by YHA at the time the reexamination was originally processed.

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**Exception Payment Standards [982.503(c)]**

YHA must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

**Unit-by-Unit Exceptions [24 CFR 982.503(c)(2)(ii)]**

Unit-by-unit exceptions to YHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect YHA's payment standard schedule.

When needed as a reasonable accommodation, YHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size. YHA may request HUD approval for an exception to the payment standard for a particular family if the required amount falls between 120 and 130 percent of the FMR.

YHA Policy

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, YHA must determine that:

- Through third party verification, YHA determines that the family is eligible for the reasonable accommodation request;
- There is a shortage of affordable units that would be appropriate for the family;
- The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

**"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]**

If a substantial percentage of families have difficulty finding a suitable unit, the YHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows YHA to set its payment standards at 90-110 percent of a higher FMR (the 50<sup>th</sup>, rather than the 40<sup>th</sup> percentile FMR). To support the request, YHA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;

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- The YHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
  - The YHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, YHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of YHA's jurisdiction within the FMR area.

### **Decreases in the Payment Standard Below the Basic Range [24 CFR 982.503(d)]**

YHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

### **16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]**

A YHA-established utility allowance schedule is used in determining family share and YHA subsidy. YHA must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, YHA must use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, YHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to YHA about establishing utility allowance schedules.

Section 242 of the 2014 Appropriations Act and HUD streamlining rule limits the utility allowance payment for tenant-based vouchers to the family unit size for which the voucher is issued, irrespective of the size of the unit rented by the family, with an exemption for families with a person with disabilities.

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Under section 242 and streamlining, the utility allowance for a family shall be the lower of:

- (1) The utility allowance amount for the family unit size; or
- (2) The utility allowance amount for the unit size of the unit rented by the family.

However, upon the request of a family that includes a person with disabilities, YHA must approve a utility allowance higher than the applicable amount if such a higher utility allowance is needed as a reasonable accommodation in accordance with HUD's regulations in 24 CFR part 8 to make the program accessible to and usable by the family member with a disability.

### **Air Conditioning**

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

### **YHA Policy**

YHA has included an allowance for air-conditioning in its schedule. Central air-conditioning or a portable air conditioner must be present in a unit before YHA will apply this allowance to a family's rent and subsidy calculations.

### **Reasonable Accommodation**

HCV program regulations require YHA to approve a utility allowance amount higher than shown on the YHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, YHA will approve an allowance for air-conditioning, even if YHA has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

### **Utility Allowance Revisions**

YHA must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

YHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

### **YHA Actions to Reduce HCV Program Cost**

Some of the actions noted below relate to program compliance issues (e.g., ensuring rents are reasonable, incomes are verified correctly, and utility allowances are accurate). Although YHA must comply with such requirements, regardless of whether YHA is experiencing financial difficulties, YHA may take within the context of program requirements to better manage HAP expenses.

Cost-savings measures are optional and have varying degrees of impact on applicant and participant families. The impact of each action should be considered prior to implementation. If an action adversely impacts program participants, particularly a family's rent burden, then YHA

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should take all other actions having no impact or less impact on families first, including the use of administrative fee reserves to pay for HAP expenses.

The following is a non-exclusive list of YHA cost savings actions.

**a. Family Income Matching/Verification and Other Anti-Fraud Efforts**

YHA should accelerate efforts concerning income matching and income verification. YHA could notify families that enforcement action could be taken where underreporting of income is discovered.

**b. Ensuring Reasonable Rents**

YHA does not have to wait until the HAP contract anniversary date to review owner rents and reduce them if warranted. YHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units in accordance with the regulation at 24 CFR 982.507(b) and the HAP contract. YHA should ensure that owner rents do not exceed amounts charged for unassisted units in the same building or complex. The initial rent and all rent increases must comply with any State or local rent control limits. Further, any owner leasing promotions for unassisted tenants (e.g., the initial two months of occupancy are "rent free") must be taken into consideration in determining rent reasonableness.

In accordance with the HAP contract, YHA must provide written notice to owners before reducing unreasonable rents. Rents may be reduced as early as the first of the following month. If the rent to owner is not reasonable as most recently determined by YHA, the owner must reduce the rent to the reasonable amount or the HAP contract must be terminated. In such cases, the family will be issued a HCV to find a new unit. (Movers, like new participants, are subject to YHA's current payment and occupancy standards.)

Even if an owner's rent is reasonable, YHA could request owners to voluntarily agree to a temporary rent reduction or defer rent increases to help YHA avoid the termination of HAP contracts due to shortfalls in HCV funding. It is the owner's option to agree to such measures.

**c. Ensuring Accurate Utility Allowances**

YHA may always review its utility allowances more than annually to determine if they are too high. Changes in utility allowances may be implemented immediately, but not later than the next regularly scheduled reexamination of family income.

**d. Portability Absorption**

An initial PHA may request that a receiving PHA absorb portable families for which the initial PHA is being billed. This may include the receiving PHA retroactively absorbing families for which the initial PHA was already billed and made payments. In these cases, the receiving PHA reimburses the initial PHA for payments made back to the effective date of the absorption. Both the receiving PHA and initial PHAs must agree to this

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arrangement. This provision provides an exception to section 10 of Notice PIH 2008-43 on HCV Portability and Corrective Actions. (Section 10 provides that 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.)

**e. Portability and Moves within the YHA Jurisdiction**

The HCV program regulations at 24 CFR 982.314(e)(1) provide that YHA may deny a family permission to move if the YHA does not have sufficient funding for continued assistance. Denial of requests to move under this regulation may cover both portability moves to a higher cost area as well as moves within the YHA jurisdiction to higher cost units.

In order to deny a move, the YHA must determine and demonstrate that based on the current funding available, it has insufficient funds to pay for higher subsidy amounts without having to terminate assistance of current program participants during the current CY. In projecting whether there is sufficient funding available for the remainder of the CY, YHA may use reasonable estimates to factor in conditions such as pending rent increases and attrition rates for families leaving the program. If this insufficient funding condition exists, YHA does not need a regulatory waiver from HUD to deny a request to move.

In determining if the YHA has sufficient funding available to approve a move, YHA **must** take into consideration its available budget authority (including any available NRA).

YHA may only deny a move where the requested move is voluntary (i.e., the family elects to move but is not required to move because of unaddressed Housing Quality Standards (HQS) violations, owner re-occupancy of the unit, etc.). YHA may not deny a move under 24 CFR 982.314(e)(1) if the move would reduce the family's subsidy cost to YHA (e.g., a family wished to move under portability to a lower cost area). YHA may not deny a move to a higher cost area or unit as a cost-savings measure in order to admit additional families from its waiting list into the HCV program, regardless of whether YHA has unit months available to do so.

A higher cost area is defined as an area where a higher subsidy amount will be paid for a family because of higher payment standard amounts or more generous subsidy standards (e.g., the receiving PHA issues a 3-bedroom voucher to a family that received a 2-bedroom voucher from the initial PHA). In the case of portability moves, the YHA needs to contact the receiving PHA before denying the move to confirm that the receiving PHA (a) will not absorb the family and (b) that the HAP costs would be higher. If the receiving PHA is willing to absorb the family, there are no grounds to deny the portability move under 24 CFR 982.314(e) (1).

**f. Interim Reexaminations**

**YHA** could require families to report all increases in income between reexaminations and conduct more frequent interim income reviews for families reporting no income. The

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effective date of an annual or interim reexamination of family income is dependent upon YHA policies.

**g. Minimum Rent**

YHA may increase the minimum rent to \$50. The effective date for the increased minimum rent is dependent upon YHA policy. YHA could institute a policy for increases in family contribution to be effective immediately, rather than at the next annual reexamination.

**h. Voucher Issuance**

YHA may stop issuing turnover vouchers and consider pulling back outstanding vouchers for applicants searching for housing that have not yet resulted in an executed HAP contract.

**i. Subsidy Standards**

YHA may revise subsidy standards that exceed minimum HUD requirements to reduce bedroom size eligibility in accordance with 24 CFR 982.402. YHA at any time can implement a new subsidy standard of 2 heartbeats per bedroom. Subsidy standards must be consistent with the HQS space requirements in 24 CFR 982.401(d). PHAs are reminded that under 24 CFR 982.401(d)(2)(ii), a dwelling unit must have at least one bedroom or living sleeping area for each two persons. Children of the opposite sex, other than the very young, may not be required to occupy the same bedroom or living/sleeping room.

If a family leases a unit larger than the unit size on the voucher, YHA must ensure that the payment standard used to calculate the tenant share is based on the lower of the voucher unit size for which the family is eligible or the actual unit size leased. If the family size is reduced after admission, YHA must ensure that the correct payment standard is used in calculating the family rent portion. An “empty nester” single individual (or any household with similarly reduced member size) living in a 3-bedroom unit should have a 0- or 1-bedroom payment standard, not a 3-bedroom payment standard. If the unit size for which the family is eligible changes during the term of the HAP contract, the new unit size is applicable at the first regular reexamination following the change in accordance with 24 CFR 982.505(c)(5).

**j. Payment Standards**

YHA may opt to lower payment standards for all or some unit sizes. In the tenant-based HCV program, a lower payment standard applies immediately to all new admissions, all movers, and families remaining in their units with a new HAP contract (e.g., when the owner offers or requires a new lease). For all other HCV participants, decreased payment standard amounts are not applied until the second regular reexamination after the payment standard is lowered (see 24 CFR 982.505(c)(3)). The delayed applicability of a lower payment standard is a regulatory, not statutory, requirement. PHAs experiencing financial difficulties may request a regulatory waiver for good cause so that reduced payment standards may be applied sooner than provided by regulation.