

**RESOLUTION 17-856**  
**A RESOLUTION REVISING THE SECTION 8 ADMINISTRATIVE PLAN OF**  
**THE HOUSING AUTHORITY OF THE CITY OF YAKIMA**

**WHEREAS**, The Housing Authority of the City of Yakima (YHA) is required to periodically update its Section 8 Administrative Plan to remain in compliance with Federal Regulations; and

**WHEREAS**, YHA has found it necessary to amend the entire Section 8 Administrative Plan to conform to all current HUD regulations, policies, and guidelines.

**NOW THEREFORE**, be it resolved that the Housing Authority of the City of Yakima, in a special meeting, a quorum being present, does hereby adopt the attached revised Section 8 Administrative Plan.

**PASSED AND ADOPTED BY THE HOUSING AUTHORITY OF THE CITY OF YAKIMA BOARD OF COMMISSIONERS THIS 21st DAY OF MARCH, 2017.**



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Chairman, Board of Commissioners

3/21/2017

\_\_\_\_\_  
Date

Attest:

  
\_\_\_\_\_  
Secretary

## Chapter 1

### OVERVIEW OF THE PROGRAM AND PLAN

#### INTRODUCTION

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

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

There are three parts to this chapter:

Part I: The YHA. This part includes a description of the YHA, its jurisdiction, its programs, and its mission and intent.

Part II: The HCV Program. This part contains information about the Housing Choice Voucher program operation, roles and responsibilities, and partnerships.

Part III: The HCV Administrative Plan. This part discusses the purpose and organization of the plan and its revision requirements.

#### PART I: THE YHA

##### 1-I.A. OVERVIEW

This part explains the origin of the YHA's creation and authorization, the general structure of the organization, and the relationship between the YHA Board and staff.

##### 1-I.B. ORGANIZATION AND STRUCTURE OF THE YHA

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by the YHA, for the jurisdiction defined as the City of Yakima, and in the County of Yakima and Kittias and surrounding area, except as may further be approved by agreements with the Housing Authorities of those municipalities as provided under state and local law.

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

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

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

### **1-I.C. YHA MISSION**

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

#### YHA Policy

The mission of the Yakima Housing Authority is "Building Stronger Communities Through our Commitment to Safe and Affordable Housing"

### **1-I.D. THE YHA'S PROGRAMS**

The following programs are included under this administrative plan:

#### YHA Policy

The Yakima Housing Authority (YHA) is a public housing agency providing affordable housing opportunities for low-income families, the elderly, and persons with disabilities in the community.

The YHA's Administrative Plan is applicable to the operation of the Housing Choice Voucher program including if any property under the Project-based Voucher (PBV) and if and when any RAD Conversions that may occur under the PBV Program.

In addition, the administrative plan addresses policies for the following special programs:

#### 1 Veterans Affairs Supportive Housing (VASH)

Veterans who are receiving case management from the VA are referred to YHA by Veterans Affairs. The VASH program is operated the same as the Housing Choice Voucher program except that:

- To remain eligible the vet must be receiving case management from the VA or have been determined by the VA to no longer need case management services.
- Because the vet is currently receiving a voucher if they are no longer in need of case management, they may transfer to a Housing Choice Voucher without being on the waiting list.

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2. Non Elderly Disabled Vouchers  
These vouchers will enable non-elderly disabled persons residing in nursing homes or other health care institutions to transition into the community with appropriate services.
    - Participants must also agree to actively participate in the service planning process to assist in successful transition.
  3. Washington Families Fund (WFF)  
YHA designates a certain number of vouchers, not to exceed 20, in a year for use by families moving from transitional housing.
    - Families must be receiving case management
    - Participants are encouraged to apply to the HCV waiting list when it is open.
  4. Family Unification (FUP)  
Family Unification Program is tenant based rental assistance where either the children are being removed or unable to be returned due to housing issues, or where a youth is aging out of foster care.

### **1-I.E. THE YHA'S COMMITMENT TO ETHICS AND SERVICE**

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

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

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- Attain and maintain a high level of standards and professionalism in day-to-day management of all program components.
  - Administer an efficient, high-performing agency through continuous improvement of the YHA’s support systems and commitment to our employees and their development.

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

To administer the Section 8 Program and model the Housing Department on the Vision and Values Statement of the Yakima Housing Authority:

- We are dedicated to serving our customers.
- We value and respect diversity.
- We work as a team.
- We each do all we can.
- We learn, change and improve.
- We focus on results.
- We work with integrity.
- We make Yakima better!

## **PART II. THE HOUSING CHOICE VOUCHER (HCV) PROGRAM**

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

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

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

The Housing and Community Development (HCD) Act of 1974 created a new federally assisted housing program – the Section 8 Existing program (also known as the Section 8 Certificate

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program). The HCD Act represented a significant shift in federal housing strategy from locally owned public housing to privately owned rental housing.

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

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

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

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

### **1-II.B. HCV PROGRAM BASICS**

The purpose of the HCV program is to provide rental assistance to eligible families. The rules and regulations of the HCV program are determined by the U.S. Department of Housing and Urban Development. The YHA is afforded choices in the operation of the program that are included in the YHA's Administrative Plan, a document approved by the board of commissioners of the YHA.

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

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

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

### **1-II.C. THE HCV PARTNERSHIPS**

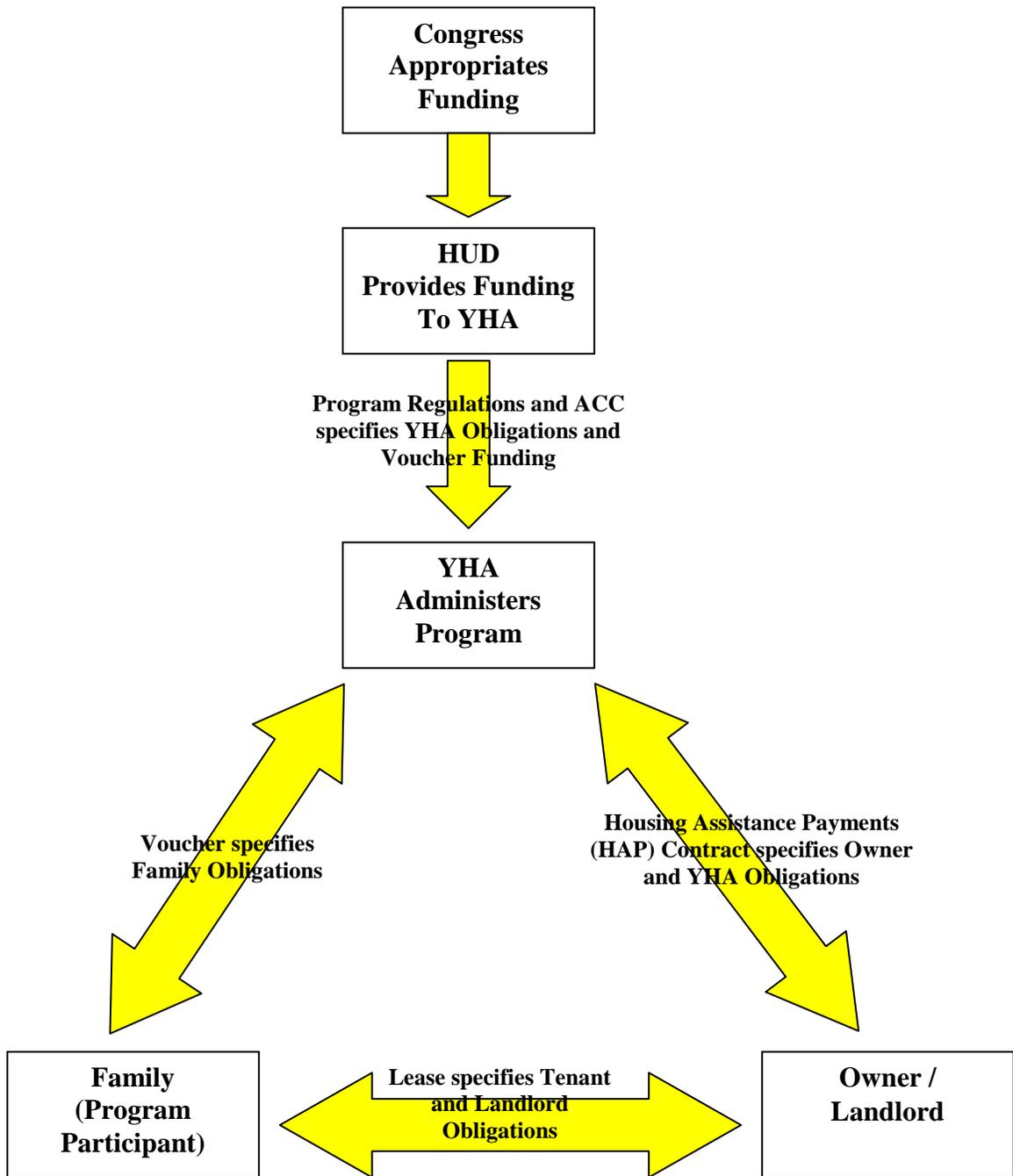
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To administer the HCV program, the YHA enters into a contractual relationship with HUD. The YHA also enters into contractual relationships with the assisted family and the owner or landlord of the housing unit.

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

The chart illustrates key aspects of these relationships.

The HCV Relationships:



### **What does HUD do?**

HUD has the following major responsibilities:

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

### **What does the YHA do?**

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

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

### **What does the Owner do?**

The owner has the following major responsibilities:

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

### **What does the Family do?**

The family has the following responsibilities:

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

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- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing programs.

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

### **1-II.D. APPLICABLE REGULATIONS**

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 35: Lead-Based Paint
- 24 CFR Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
- 24 CFR Part 983: Project-Based Vouchers
- 24 CFR Part 985: The Section 8 Management Assessment Program (SEMAP)

## **PART III. THE HCV ADMINISTRATIVE PLAN**

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

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

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

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

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

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

HUD regulations contain a list of what must be included in the Administrative Plan. The YHA Administrative Plan must cover YHA policies on these subjects:

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- Selection and admission of applicants from the YHA waiting list, including any YHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the YHA waiting list (Chapter 4);
  - Issuing or denying vouchers, including YHA policy governing the voucher term and any extensions or suspensions of the voucher term. 'Suspension' means stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the YHA decides to allow extensions or suspensions of the voucher term, the PHA administrative plan must describe how the YHA determines whether to grant extensions or suspensions, and how the YHA determines the length of any extension or suspension (Chapter 5);
  - Any special rules for use of available funds when HUD provides funding to the YHA for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families (Chapter 4);
  - Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553 (Chapters 3 and 12);
  - Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
  - Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
  - Providing information about a family to prospective owners (Chapters 3 and 9);
  - Disapproval of owners (Chapter 13);
  - Subsidy standards (Chapter 5);
  - Family absence from the dwelling unit (Chapter 12) ;
  - How to determine who remains in the program if a family breaks up (Chapter 3);
  - Informal review procedures for applicants (Chapter 16);
  - Informal hearing procedures for participants (Chapter 16);
  - The process for establishing and revising voucher payment standards (Chapter 16);
  - The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (Chapter 8);
  - Special policies concerning special housing types in the program (e.g., use of shared housing) (Chapter 15);
  - Policies concerning payment by a family to the YHA of amounts the family owes the YHA (Chapter 16);
  - Interim redeterminations of family income and composition (Chapter 11);

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

### **New Approach to Policy Development**

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

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

### **Mandatory vs. Discretionary Policy**

HUD makes a distinction between:

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

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

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

### **1-III.C. ORGANIZATION OF THE PLAN**

The Plan is organized to provide information to users in particular areas of operation.

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**1-III.D. UPDATING AND REVISING THE PLAN**

The YHA will revise this Administrative Plan as needed to comply with changes in HUD regulations. The original plan and any changes must be approved by the board of commissioners of the agency, the pertinent sections included in the Agency Plan, and a copy provided to HUD during the Annual Plan process. This is primarily achieved during the submission of the Annual Plan of which the Administrative Plan is an attachment.

YHA Policy

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

## **Chapter 2**

### **FAIR HOUSING AND EQUAL OPPORTUNITY**

#### **INTRODUCTION**

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

This chapter describes HUD regulations and YHA's policies related to these topics in three parts:

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

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

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of the YHA to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates HUD and DOJ's Notice of Guidance, published January 22, 2007 in the *Federal Register*.

#### **PART I: NONDISCRIMINATION**

##### **2-I.A. OVERVIEW**

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

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973

- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the *Federal Register* February 3, 2012 and further clarified in Notice PIH 2014-20
- Violence Against Women Reauthorization Act of 2013 (VAWA)
- When more than one civil rights law applies to a situation, the laws will be read and applied together.
- Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

#### YHA Policy

No additional state or local nondiscrimination laws or ordinances apply above the federal directives, except as noted.

#### **Impediments to Fair Housing/Affirmatively Furthering Fair Housing (Final Rule July 16, 2015)**

It is the policy of YHA to comply fully with all Federal, State, and local nondiscrimination laws; the Americans with Disabilities Act; and the U.S. Department of Housing and Urban Development regulations governing Fair Housing and Equal Opportunity.

No person shall, on the grounds of race, color, sex, sexual orientation, religion, national origin, familial status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under YHA housing programs.

#### **2-I.B. NONDISCRIMINATION**

Federal regulations prohibit discrimination against certain protected classes. State and local requirements, as well as YHA policies, can prohibit discrimination against additional classes of people. Washington State provides these protected classes: race, color, religion, sex, familial status, ancestry, disability, or national origin.

The YHA shall not discriminate because of race, color, sex, religion, familial status, age, handicap, disability, sexual orientation, or national origin (called “protected classes”)

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

The YHA will not discriminate on the basis of marital status, gender identity or sexual orientation. [FR Notice 02/03/12]

To further its commitment to full compliance with applicable Civil Rights laws, the Housing Department will provide Federal/State/local information to voucher holders regarding unlawful discrimination and any recourse available to them if they believe they are victims of discrimination.

Except as otherwise provided in 24 CFR 8.21(c)(1), 8.24(a), 8.25 and 8.31, no individual with disabilities shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination because the Housing Department's facilities are inaccessible to or unusable by persons with disabilities. Posters and housing information are displayed in locations throughout the Housing Department offices in such a manner as to be easily readable from a wheelchair.

The Housing Department offices are accessible to persons with disabilities.

Copies of the federal Fair Housing Act may be obtained by contacting the Housing Department at (501) 624-4404 or (501) 624-4405.

The Housing Department will promptly investigate all complaints of housing discrimination. A resident may report housing discrimination by contacting the Housing Department supervisor, program administrator or by contacting the Housing Department at:

Yakima Housing Authority

Residents may also file complaints of housing discrimination with the Washington Fair Housing Commission.

Upon request, any resident who wishes to file a complaint of housing discrimination with HUD may obtain a copy of a housing discrimination complaint form from this office.

### YHA Policy

The YHA does not identify any additional protected classes.

The YHA will not use any of the protected class factors, unless provided under the regulations or laws, to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the housing choice voucher program
- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission

- Steer an applicant or participant toward or away from a particular area based any of these factors
- Deny anyone access to the same level of services
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate in the provision of residential real estate transactions
- Discriminate against someone because they are related to or associated with a member of a protected class
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class.

### **Providing Information to Families and Owners**

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

### **Discrimination Complaints**

If an applicant or participant believes that any family member has been discriminated against by the YHA or an owner, the family should advise the YHA. HUD requires the YHA to make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action. In addition, the YHA is required to provide the applicant or participant with information about how to file a discrimination complaint [24 CFR 982.304].

Upon receipt of a housing discrimination complaint, the YHA is required to:

- Provide written notice of the complaint to those alleged and inform the complainant that such notice was made
- Investigate the allegations and provide the complainant and those alleged with findings and either a proposed corrective action or an explanation of why corrective action is not warranted

Keep records of all complaints, investigations, notices, and corrective actions  
[Notice PIH 2014-20]

### YHA Policy

Applicants or participants who believe that they have been subject to unlawful discrimination may notify the YHA either orally or in writing.

The YHA will attempt to remedy discrimination complaints made against the YHA.

The YHA will provide a copy of a discrimination complaint form to the complainant and provide them with information on how to complete and submit the form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

The YHA will attempt to remedy discrimination complaints made against the YHA and will conduct a review into all allegations of discrimination.

Within 10 business days following the conclusion of the YHA's review, the YHA will provide the complainant and those alleged to have violated the rule with findings and either a proposed corrective action plan or an explanation of why corrective action is not warranted.

The YHA will keep a record of all complaints, reviews, notices, and corrective actions. (See Chapter 16.)

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

### **2-II.A. OVERVIEW**

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

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

#### YHA Policy

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

“If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact the housing authority.”

A specific name and phone number of designated staff will be provided to process requests for accommodation.

The YHA will display posters and other housing information and signage in locations throughout the YHA's office in such a manner as to be easily readable from a wheelchair

### **SELF-EVALUATIONS/NEEDS ASSESSMENTS/TRANSITION PLAN (PIH 2010-26)**

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Section 504 of the Rehabilitation Act of 1973 (Section 504); Title II of the Americans with Disabilities Act of 1990 (ADA):

Initially, with the issuance of the Section 504 implementing regulations at 24 CFR Part 8 on June 2, 1988, YHA was required to conduct needs assessments and develop transition plans to address the identified needs of residents and applicants with disabilities. The transition plan and the needs assessment are required to be available for public review pursuant to 24 CFR § 8.25(c).

Likewise, YHA was required to conduct a self-evaluation their current policies and practices to determine whether, in whole or in part, they do not or may not meet the requirements of Section 504. YHA must then modify any policies and practices that do not meet the requirements and take appropriate corrective steps to remedy the discrimination revealed by the self-evaluation. See 24 CFR § 8.51.

HUD's Office of Fair Housing and Equal Opportunity (FHEO) will continue, as a matter of routine, to request copies of any self-evaluations, needs assessments or transition plans in every compliance review and complaint investigation conducted of a HUD recipient. These documents may also be reviewed by other HUD offices in conjunction with funding applications and in addressing non-compliance issues that may arise. In addition, effective January 26, 1992, Title II of the ADA required PHAs to conduct a self-evaluation of their current services, policies and practices. See 28 CFR §§ 35.105 and 35.150 (d).

PHA-Plan regulations pursuant to the U.S. Housing Act of 1937 at 24 CFR § 903.7(a)(1)(ii) require the submission of a statement addressing the housing needs of low-income and very low-income families, including such families with disabilities, who reside in the jurisdiction served by the YHA and families who are on the public housing and housing choice voucher program waiting list.

Additionally, to ensure continued compliance with Section 504 and Title II of the ADA, YHA is encouraged to conduct needs assessments and self-evaluations, at least yearly, working with persons/residents with disabilities and local advocacy groups for persons with disabilities. (see 24 CFR §§ 8.25(c) and 8.51 for additional information). Transition plans should be updated as a result of such needs assessments and self-evaluations. The transition plan must be made available for public review.

YHA Policy

YHA will develop and maintain a transitional plan to remain in compliance with the Fair Housing Requirements. YHA shall update the plan at least every five years as required and made available for public review.

**THE FAIR HOUSING ACT/24 CFR PART 100**

Illegal Inquiries (24 CFR § 100.202) – The Fair Housing Act makes it unlawful for a housing provider to:

- Ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or

- Ask about the nature or severity of a disability of such persons.

YHA may make the following inquiries, provided these inquiries are made of all applicants, regardless of whether the applicant appears to have a disability or says he or she has a disability;

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is involved in current, illegal use of drugs;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability. YHA may inquire whether an applicant has a disability for determining if that person is eligible to live in mixed population (elderly/disabled) housing or housing designated for persons with disabilities;
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability. This means YHA may ask applicants if they need units with accessible features, including units designed to be accessible for persons with hearing and/or visual impairments, or if they qualify for a housing choice voucher designated for persons with disabilities only.

**Verification of eligibility for YHA programs and benefits for persons with disabilities:**

YHA is required to verify that an applicant qualifies as a person with a disability before permitting them to move to housing designated for persons with disabilities, or granting the \$400 rent calculation deduction, disability expense allowance, or deduction for unreimbursed medical expenses. Applicants and residents cannot be compelled to reveal that they have a disability; however, if they do not, they may not receive any of the benefits that such status confers. YHA's policy is to ask all applicants whether they wish to claim disability status or need any special unit features or methods of communication for persons with disabilities.

YHA will explain the consequences of the disclosure of one's disability as having possible benefits in rent calculation or an accessible unit, and required verification of disability prior to receipt of the particular benefit at issue.

**Verification of disability and need for requested reasonable accommodation(s):**

To verify that an applicant is a person with a disability, YHA staff can first check to see whether the applicant is under age 62 and receives either Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) income. Receipt of such disability income is sufficient verification that an individual qualifies as a person with a disability. However, individuals with disabilities who do not receive SSI or SSDI may still qualify as a person with a disability under the statutory definitions of disability. In these cases, the individual with a disability may need to provide supporting documentation. If a person requests a reasonable accommodation, then the YHA may need to verify that the person is a qualified individual with a disability and whether a requested accommodation is necessary to provide the individual with an equal opportunity to use or enjoy a dwelling unit, including the public and common areas. In doing so, YHA should only ask for information that is actually necessary to verify that the person has a disability and that there is a reasonable nexus between the individual's disability and the requested accommodation(s).

YHA is not permitted to inquire about the nature or severity of the person's disability. Further, YHA staff may never inquire about an individual's specific diagnosis or details of treatment. If YHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment and/or information regarding the nature or severity of the person's disability, the YHA should immediately dispose of this confidential information; this information should never be maintained in the individual's file. Under no circumstances should YHA request an applicant's or resident's medical records, nor should YHA require that applicants or residents submit to physical examinations or medical tests such as TB testing, or AIDS testing as a condition of occupancy.

Note: It is a violation of Section 504 and the Fair Housing Act for a PHA to inquire whether an applicant or tenant is capable of "living independently." Courts have consistently held that this is not a legitimate inquiry to make of applicants or residents in HUD-assisted housing and PHAs should ensure that their screening materials do not include questions related to such an inquiry.

**Reasonable Modification to Existing Premises (24 CFR § 100.203)** – Applies to private owners participating in housing choice voucher programs or other tenant-based programs, as well as to PHA owners of existing public housing units.

Under the Fair Housing Act, it is unlawful for an owner to refuse to permit a person with a disability, at their own expense, to make reasonable modifications of existing premises occupied or about to be occupied by a person with a disability if such modification may be necessary to afford the person with a disability full enjoyment of the premises. Under certain circumstances the owner may require the tenant to pay into an escrow account funds necessary to restore the interior of the unit to its original condition if the modification would interfere with the owner or next resident's full enjoyment of the premises (see regulation for further requirements and guidance.) An owner may require that a resident restore modifications to the interior of the unit.

**Reasonable Accommodation (24 CFR § 100.204)** - Applies to private owners participating in Housing Choice Voucher programs, PHAs and all housing providers that are recipients of Federal financial assistance. PHAs are also covered under Section 504. The Fair Housing Act makes it unlawful for any person to refuse to make reasonable accommodations in rules, policies,

practices or services when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling unit, including public and common use areas (see regulation for further requirements and guidance).

## **2-II.B. DEFINITION OF REASONABLE ACCOMMODATION AND PROGRAM SPECIFICS**

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

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

### **Reasonable Accommodations [see 24 CFR §§ 8.20, 8.21, 8.24 and 8.33].**

YHA and other recipients of Federal financial assistance are required to make reasonable adjustments to their rules, policies, practices and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the housing unit, the common areas of a dwelling or participate in or access programs and activities conducted or sponsored by the YHA and/or recipient. When a family member requires a policy modification to accommodate a disability, YHA must make the policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue hardship on the YHA's programs. Factors to be considered include:

- The overall size of YHA's program with respect to the number of employees, number and type of facilities and size of budget;
- The type of YHA's operation, including the composition and structure of the YHA's workforce and;
- The nature and cost of the accommodation needed.

YHA is not required to accommodate an individual with a disability by modifying a rule or policy that is required by statute. Such a change would be a fundamental alteration of a program.

As with other requested reasonable accommodations, YHA and other recipients are not required to provide requested structural modifications if doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. However, the YHA or other recipient is required to provide any other reasonable accommodation up to the point that would not result in an undue financial or administrative burden on the particular recipient and/or constitute a fundamental alteration of the program.

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**YHA Specific Requirements for the Housing Choice Voucher Program (see 24 CFR § 8.28). Notice PIH 2005-05 and subsequent reinstatements by Notice PIH 2006-21 and PIH Letter L-2007-1: New Freedom Initiative, Executive Order 13217: “Community-Based Alternatives for Individuals with Disabilities,” and the Housing Choice Voucher Program.]**

In carrying out the requirements of 24 CFR § 8.28, the YHA administering a Housing Choice Voucher Program shall:

In providing notice of the availability and nature of housing assistance for low-income families under program requirements, adopt a suitable means to ensure that the notice reaches eligible individuals with disabilities and that they can have an equal opportunity to participate in the application process for the Housing Choice Voucher Program;

- In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;
- When issuing a Housing Choice Voucher to a family which includes an individual with disabilities, include a current listing of available accessible units known to the YHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit;
- Take into account the special problems of locating an accessible unit when considering requests by eligible individuals with disabilities for extensions of Housing Choice Vouchers; and
- In order to ensure that participating owners do not discriminate in the recipient’s federally assisted program, the YHA shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of non-discrimination.
- If necessary as a reasonable accommodation for a person with disabilities, approve a family request for an exception payment standard under Sec. 982.505(d) for a regular tenancy under the Section 8 voucher program so that the program is readily accessible to and usable by persons with disabilities.

**Other Specifics to the Housing Choice Voucher Program**

YHA may give preference in admission to applicants with disabilities based on local needs and priorities. However, the YHA may not give a preference for admission of persons with a specific disability. See 24 CFR § 982.207(b)(3).

A person with disabilities may choose a suitable unit from among units available for rent in the local rental market.

YHA has the discretion to approve exception payments standards up to 120 percent of the Fair Market Rent when requested as a reasonable accommodation. See 24 CFR § 982.505(d). The HUD field office may approve an exception payment standard amount within the upper range

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(between 120-130% of the Fair Market Rent) if required as a reasonable accommodation for a family that includes a person with disabilities. Any exceptions to the payment standards would be granted as a reasonable accommodation after the family with a person with disabilities locates a unit if needed as a reasonable accommodation. See 24 CFR § 982.503(c)(2)(ii) and 24 CFR § 8.28(a)(5). Requests for exception rents above 120% that are needed as a reasonable accommodation for a person with a disability to allow the person to rent an appropriate unit must be submitted to HUD headquarters for regulatory waiver and approval.

YHA may approve the leasing of a unit from a relative to provide reasonable accommodation for persons with disabilities. See 24 CFR § 982.306(d) also see <http://www.hud.gov/offices/pih/publications/notices/09/pih2009-22.pdf> for additional on live-in aides.

Owners of private rental units leased with voucher assistance must make reasonable accommodations in rules, policies, practices or services if necessary for a person with disabilities to use the housing and must allow the person with a disability to make reasonable modifications in accordance with 24 CFR § 100.203. See also 24 CFR § 100.204 (a).

#### **SECTION 8/HOMEOWNERSHIP OPTION- 24 CFR § 982.625 – THRU § 982.643**

If YHA is administering the HCV Homeownership Program, the additional Fair Housing provisions will be applicable:

- A disabled family meets the first-time homeowner requirement even if the family owned a home within the last three years if use of the homeownership option is needed as a reasonable accommodation so that the housing choice voucher program is readily accessible to and usable by the family member with a disability. See 24 CFR § 982.627 (b)(3)
- YHA must count welfare assistance for a disabled family in determining whether the family meets the minimum annual income used to determine if a family member qualifies for commencement of home ownership assistance. See 24 CFR § 982.627(c)(2)(i).
- The full-time employment eligibility requirement does not apply to a family with a disability. See 24 CFR § 982.627(d)(3).
- The limit on the length of time a family may receive homeownership assistance does not apply to families with disabilities. See 24 CFR § 982.634(c).
- Covered homeownership expenses may include principal and interest on mortgage debt incurred by the family to finance the cost of making the home accessible for a family member with a disability if the PHA determines the allowance of such costs is needed as a reasonable accommodation. See 24 CFR § 982.635(c)(vii).

#### **PROJECT-BASED VOUCHER PROGRAM**

If YHA is administering the Project-based Voucher Program, the additional Fair Housing provisions will be applicable:

- YHA, at their discretion, may choose to use up to 20 percent of their tenant-based assistance for project-based subsidies to encourage the development of projects for persons with disabilities.
- Under the new law governing project-based assistance, only 25 percent of the units in a project may be subsidized. However, the law allows an exception for units for families with disabilities, elderly families and for families who receive supportive services.
- 24 CFR § 983.251(d) states that YHA may give preference to disabled families who need services offered at a particular project in accordance with certain limits. Limits include: families with disabilities that significantly interfere with the ability to obtain and maintain themselves in housing; families who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and for families whom such services cannot be provided in a non-segregated setting. Disabled persons cannot be required to accept the particular services offered in a project. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

**Non-housing Facilities (see 24 CFR § 8.21).**

Newly constructed non-housing facilities shall be designed to be readily accessible to and usable by people with disabilities. Alterations to existing facilities shall be made accessible to the maximum extent feasible – defined as not imposing an undue financial and administrative burden on the operations of the recipient’s program or activity. For existing non-housing facilities, CHAs shall operate each program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. There are a number of methods included in the regulation at 24 CFR § 8.21(c)(2) which may be used to accomplish accessibility in existing non-housing programs and activities.

Departures from UFAS are permitted as outlined in Section I. B, item 5 of PIH 2010-26.

**Common Areas**

Section 504 and Title II of the ADA require that YHA operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. *See* 24 CFR § 8.24(a) and 28 CFR § 35.150 (a).

Therefore, the YHA must ensure that its common areas and public spaces serving its designated accessible units, including, but not limited to, community buildings, management offices, meeting rooms, corridors, hallways, elevators, entrances, parking, public transportation stops, social service offices, mail delivery, laundry rooms/facilities, trash disposal, playgrounds, child care centers, training centers and recreational centers, are accessible to individuals with disabilities. In the alternative, the YHA may offer the program, service or activity, currently located in an inaccessible location, in an equivalent, alternate accessible location.

Specifically, YHA may comply with the requirements of 24 CFR § 8.24 through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, provision of housing or related services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. In choosing among available methods, the PHA shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. *See* 24 CFR § 8.24 (b).

## **FAIR HOUSING PROVISIONS AS RELATES TO ADMISSION/OCCUPANCY**

### **Application Process**

YHA must ensure that all employees who are involved in the application process understand how to conduct tenant selection and screening without discriminating on the basis of any protected class, in particular applicants with disabilities. All application offices must be accessible. The YHA must provide accessible materials for persons with sight and hearing impairments and otherwise provide effective communication, upon request. *See* 24 CFR § 8.6 and § 8.54(c). YHA must make special arrangements to take the application of persons who are unable to come to the PHA's offices because of a disability. At the initial point of contact with each applicant, the YHA must inform all applicants of alternative forms of communication. *See* 24 CFR § 8.6.

### **Effective Communication/Provision of Auxiliary Aids & Services:**

The YHA shall provide appropriate auxiliary aids and services, where necessary, to afford an individual with disabilities an equal opportunity to participate in the YHA's programs, services and activities. In determining what auxiliary aids are appropriate, the YHA shall give primary consideration to the request(s) of the individual with disabilities unless doing so would result in a fundamental alteration of the YHA's programs or in undue financial and administrative burden. If an action would result in such an alteration or burdens, the YHA shall take any other action up to the point that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the PHA's program or activity.

The YHA is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. *See* 24 CFR § 8.6, 28 CFR §§ 35.160 and 35.161.

When the YHA has initial contact with the applicant, resident, or member of the public, the YHA staff should ask whether the applicant, resident, or member of the public requires an alternate

form of communication. Examples of alternative forms of communication might include, but are not limited to: the provision of a qualified sign language interpreter; having written materials explained orally by staff either in person or by telephone; provision of written materials in large/bold font; information on audiocassette; permitting applicants to file applications by mail; and permitting alternative sites for the receipt of applications.

In addition, the YHA may never require the applicant to provide, or pay for, his/her own sign language interpreter. Rather, it is always the YHA's responsibility to provide, upon request, a qualified sign language interpreter. However, the YHA's responsibility to provide a qualified sign language interpreter does not preclude an individual's right to have a friend, relative or advocate accompany him/her for purposes of conducting business with the YHA.

### **Live-in-Aides**

In some cases, individuals with disabilities, near elderly, and elderly may require a live-in-aide. YHA should consider a person a live-in-aide if the person: (1) is determined to be essential to the care and wellbeing of a family member with a disability; (2) is not obligated to support the family member; and (3) would not be living in the unit except to provide the supportive services. A live-in-aide should not be required to share a bedroom with another member of the household. *See* 24 CFR §§ 966.4(d)(3) and 982.316, 982.402(b).

### **Verification**

The YHA may verify a person's disability only to the extent necessary to ensure that applicants are qualified for the housing for which they are applying; that applicants are qualified for deductions used in determining adjusted income; that applicants are entitled to any preference they may claim; and that applicants who have requested a reasonable accommodation have a need for the requested accommodation. YHA may not require applicants to provide access to confidential medical records in order to verify a disability nor may YHA require specific details as to the disability. YHA may require documentation of the manifestation of the disability that causes a need for a specific reasonable accommodation or accessible unit. YHA may not seek the individual's specific diagnosis, nor may the YHA seek information regarding the nature, severity or effects of the individual's disability.

YHA should also conduct outreach activities for income-eligible persons with disabilities. The outreach activities may include, but are not limited to publicity/advertising in local print media, contacts with advocacy groups representing persons with disabilities and other entities that come into contact with persons with disabilities such as social service agencies, medical providers, etc.

### **Screening/Reasonable Accommodations**

Many applicants with disabilities will pass screening, will not need a reasonable accommodation, will not need special accessibility features, and will be admitted in exactly the same manner as applicants without disabilities. Applicants who fail screening will receive a rejection letter. This letter must provide all applicants with information concerning the YHA's informal review process and their right to request a hearing. The letter must also state that applicants with disabilities have the right to request reasonable accommodations to participate in the informal

hearing process. The YHA is obligated to provide such reasonable accommodation unless doing so would result in a fundamental alteration in the nature of the PHA's program.

If requested by the applicant, YHA must consider verifiable mitigating circumstances that explain and/or overcome any prior misconduct related to a previous tenancy. If a reasonable accommodation would allow an applicant with a disability to meet the eligibility requirements for housing, a housing provider must provide the requested accommodation.

A reasonable accommodation allows the applicant with a disability to meet essential requirements of tenancy; it does not require the YHA to reduce or waive essential eligibility or residency requirements. Examples of reasonable accommodations include, but are not limited to: physical alteration of units; making services and programs currently located in an inaccessible location in an alternate, accessible location; and revising the YHA's policies and procedures. The YHA should focus on finding a reasonable accommodation that will permit the applicant with a disability to comply with the essential obligations of tenancy. YHA is not required to excuse the applicant from meeting those requirements. YHA will provide all applicants with information regarding the YHA's Reasonable Accommodation Policy and Procedures at the time they apply for admission and at every annual re-certification. YHA must have a reasonable accommodation policy which is now contained in the Administrative Plan. The YHA's responsibility to provide reasonable accommodations for applicants and residents is present at all times, including during lease enforcement.

### **Service Animals are Not Pets**

Regular YHA pet policies do not apply to animals that are used to assist persons with disabilities and are necessary as a reasonable accommodation. [An "assistance animal" is an animal that is needed as a reasonable accommodation for persons with disabilities. An assistance animal is not considered a "pet" and thus, is not subject to the PHA's pet policy. Assistance animals are animals that work, provide assistance, perform tasks for the benefit of a person with a disability or provide emotional support that alleviates one or more identified symptoms or effects of a person's disability.]

YHA or Owner may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed by the person with a disability.

Assistance animals are exempt from YHA's and the landlords "pet" restrictions or policy requiring pet deposits or monthly pet fees. However, all reasonable lease provisions relating to health and safety apply to assistance/service animals such as maintaining the premises in a clean and sanitary condition and ensuring that neighbors enjoy their premises in a safe and peaceful manner.

### **Types of Reasonable Accommodations**

When needed, the YHA will modify normal procedures to accommodate the needs of a person

with disabilities. Examples include:

- Permitting applications and reexaminations to be completed by mail.
- Conducting home visits.
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the YHA range) if the YHA determines this is necessary to enable a person with disabilities to obtain a suitable housing unit.
- May approve the leasing of a unit from a relative to provide reasonable accommodation for persons with disabilities. This provision does not apply to shared housing. *See* 24 CFR §§ 982.306(d), 982.615 (b)(3).
- Providing time extensions for locating a unit when necessary because of lack of availability of accessible units or special challenges of the family in seeking a unit.
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with YHA staff.
- Displaying posters and other housing information in locations throughout the YHA's office in such a manner as to be easily readable from a wheelchair.
- May approve a utility allowance that is higher than the applicable amount on the utility allowance scheduled. YHA will consider requests to approve a utility allowances because of additional equipment that uses an allowable consumption verified by engineering studies and will allow up to twenty-percent (20%) over the published and approved utility allowance.
- Exception rents for determining rent reasonableness.
- Assisted Living Units in the Housing Choice Voucher (HCV) Program- PIH 2012-40.

## **2-II.C. REQUEST FOR AN ACCOMMODATION**

The YHA is dedicated to providing housing benefits through the public housing program and, in doing so, it prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, sexual orientation and **disability**, consistent with the United States Fair Housing Act, 42 U.S.C. sections 3601-3619 and Section 504 of the Rehabilitation Act of 1973, as amended.

### **The YHA recognizes the following terms and definitions:**

1. The YHA considers a person with a “**disability**” to include: (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

2. The term “**physical or mental impairment**” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, Human Immunodeficiency Virus infection, cancer, heart disease, diabetes, mental retardation, emotional illness (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.
3. The term “**substantially limits**” suggests that the limitation is “significant” or “to a large degree.”
4. The term “**major life activity**” means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, and speaking. This list of major life activities is not exhaustive.
5. The term “**reasonable accommodation**” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.

The YHA is committed to making reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities with an equal opportunity to use and enjoy a dwelling. The YHA will consider that a person is requesting a reasonable accommodation when that person makes it clear that he/she is requesting an exception, change, or adjustment to a rule, policy, or practice, or service because of a disability, regardless of whether the request is made verbally or in writing. Upon receipt of a request for a reasonable accommodation, the YHA will engage the person in dialogue to discuss what type of accommodation he/she is requesting and, if the need for the accommodation is not readily apparent or not known to the YHA, the requester will be asked to explain the relationship between the requested accommodation and his/her disability.

In order to show that a requested reasonable accommodation may be necessary, there must be an identifiable relationship or nexus between the requested accommodation and the individual’s disability. The YHA is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability.

If a requester’s disability is known or otherwise obvious and if the need for the requested accommodation is readily apparent or known, then the YHA will NOT seek any additional information about the requester’s disability or the disability-related need for the accommodation.

If the requester’s disability is known or readily apparent to the YHA, but the need for the requested accommodation is NOT readily apparent or known, the YHA will only request information that is necessary to evaluate the disability-related need for the information.

The YHA does not ordinarily inquire into the nature and severity of an individual’s disability; however, in response to a request for a reasonable accommodation the YHA may request reliable

disability-related information that (1) is necessary to verify that the requester meets the Act's definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activity), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation.

In many circumstances the requester may be able to verify the disability with information (e.g., proof that an individual under the age of 65 years of age receives either Supplemental Security Income or Social Security Disability Insurance benefits or a credible statement by the individual).

In addition, a doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third-party who is in a position to know about the requester's disability, may also be asked to provide verification of a disability.

The YHA will maintain such information confidential and it will not be shared with anyone unless the person needs the information to make or assess the decision to grant or deny a request for the accommodation, the continuation of an accommodation or unless disclosure is otherwise required by law.

### **Application, Screening, and Leasing Process**

All prospective applicants for housing benefits are provided an opportunity to inform the YHA of their need for a reasonable accommodation at the preliminary application.

If an applicant who is an individual with a disability requires assistance in completing his/her preliminary application, he or she will receive assistance from a YHA staff.

The need for a reasonable accommodation is documented in the preliminary application.

Applicants selected from the YHA wait list are required to participate in a formal screening session. During this process, applicants are provided an opportunity to inform the YHA of a need for a reasonable accommodation. This is documented on the YHA Formal Application.

Applicants are asked to specify what types of accommodations are needed. The YHA reserves the right to ask the applicant to verify their disability and the need for the requested accommodation.

If during the screening process, an applicant, as a result of his or her disability, is unable to provide requested information by any deadline given, or where the applicant provides information which is incomplete because of his or her disability, YHA will offer the applicant assistance by offering to contact a verifier (i.e., physician, caseworker, attorney, etc). If YHA is still unable to verify the need for a reasonable accommodation or is unable to obtain the necessary information, the applicant will be provided an opportunity to submit a request for reasonable accommodation on his/her behalf, and identify and document the difficulties he/she has experienced in obtaining the requested documentation. All actions performed by YHA to

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assist the applicant to obtain the necessary information will be properly documented and retained in the screening file (as applicable). If the information from the applicant and the documentation provided and/or any other relevant circumstances that are documented are acceptable, YHA will proceed with the screening process.

### **Currently Assisted Families**

A current resident may make a request for a reasonable accommodation at any time during their residency. It is preferred that all requests be made in writing; however, in cases when residents are unable to submit a written request, YHA will offer appropriate assistance with documenting the request. After the initial request, YHA will conduct an interview with the resident to gather necessary facts related to the resident's request for reasonable accommodations. The resident must provide the YHA with enough information in order to properly review the request for a decision and verify the need for a reasonable accommodation. As mentioned above, the YHA may need to request additional information from a professional and/or physician, etc.

Once a request for a reasonable accommodation is verified then YHA will then analyze the request to determine whether the request can be granted or whether it will be denied. Provided the verification demonstrates a disability-related need for the requested accommodation the YHA will grant the request, unless the request is unreasonable, i.e., if the request would impose an undue financial and administrative burden on the YHA or it would fundamentally alter the nature of the YHA's operations. In cases where the request is denied because it is unreasonable YHA will engage the requester in an interactive process in which YHA and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations.

Once a requester's request for a reasonable accommodation has been verified and approved, the YHA will make every effort to meet the request for accommodation for the family. If the request for reasonable accommodation cannot be achieved within the existing unit and a transfer to another unit within the YHA jurisdiction is necessary, the requester will be provided a "Transfer Request Form" to complete and the requester will be placed on the transfer waiting list. The YHA will process this request for reasonable accommodation through the approved transfer process contained within the YHA's Administrative Plan Chapter 10.

### **Examples of reasonable accommodations may include, but not be limited to, the following:**

- The use of telephone applications or home visit applications
- Coordinating with a reader to be available to assist a vision-impaired applicant or resident
- Coordinating with a sign language interpreter available to a hearing-impaired applicant or resident

- Coordinating with an outside agency to assist an applicant or resident with a disability/handicap
- Requests for an extra bedroom
- Installing flashing light smoke detectors in an apartment for a household with a hearing-impaired member
- Installing a flashing light doorbell in an apartment for a household with a hearing-impaired member
- Installing raised numbers on the mailbox and in the elevator for a vision-impaired resident
- Providing a designated handicapped parking space near a mobility-impaired resident's unit although YHA's parking "first come, first served"
- Mailing or delivering a lease to a disabled resident

Permitting a third party representative to assist a disabled resident YHA conferences or meetings

#### YHA Policy

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

#### **2-II.D. VERIFICATION OF DISABILITY**

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

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

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

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to the YHA, the YHA must verify that the person meets the definition of a

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person with a disability, and that the limitations imposed by the disability require the requested accommodation.

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

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability, subject to State Statutes. [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]
- The YHA must request only information that is necessary to evaluate the disability-related need for the accommodation. **The YHA shall not inquire about the nature or extent of any disability.**
- Medical records on the individual will not be retained in the participant's file, but returned to the individual or destroyed.
- In the event that the YHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the YHA will dispose of it. In place of the information, the YHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26]

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

The YHA must approve a request for an accommodation if the following three conditions are met:

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

Requests for accommodations must be assessed on a case-by-case basis, taking into account factors such as the cost of the requested accommodation, the financial resources of the YHA at the time of the request, the benefits that the accommodation would provide to the family, and the

availability of alternative accommodations that would effectively meet the family's disability-related needs.

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

#### YHA Policy

After a request for an accommodation is presented, the YHA will respond, in writing, within 30 business days.

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

If the YHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, the YHA will notify the family, in writing, of its determination within 15 business days from the date of the most recent discussion or communication with the family.

## **2-ILF. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS**

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

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

#### YHA Policy

To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display / teletype) communication will be available. YHA will use the statewide 711.

To meet the needs of persons with vision impairments, one-on-one assistance will be provided upon request.

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

## **2-II.G. PHYSICAL ACCESSIBILITY**

The YHA must comply with the regulations pertaining to physical accessibility, including the following:

- PIH 2002-01 (HA), Accessibility Notice;
- Section 504 of the Rehabilitation Act of 1973;
- The Americans with Disabilities Act of 1990;
- The Architectural Barriers Act of 1968;
- The Fair Housing Act of 1988;
- PIH 2011-31 (HA) Fair Housing Requirements and subsequent notices.
- PIH 2010-26 (HA) Accessibility Notice and subsequent notices.

The YHA's policies concerning physical accessibility must be readily available to applicants and participants. They can be found in three key documents:

- This Plan describes the key policies that govern the YHA's responsibilities with regard to physical accessibility.
- Notice PIH 2010-26 (HA) Accessibility Notice summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
- The YHA Plan provides information about self-evaluation, needs assessment, and transition plans.

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

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

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

## **2-II.H. DENIAL OR TERMINATION OF ASSISTANCE**

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

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

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

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

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

#### **2-III.A. OVERVIEW**

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published January 22, 2007 in the *Federal Register*.

The YHA will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as Persons with Limited English Proficiency (LEP).

LEP is defined as persons who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. For the purposes of this administrative plan, LEP persons are HCV applicants and participants, and parents and family members of applicants and participants.

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

#### **2-III.B. ORAL INTERPRETATION**

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In a hearing, or situations in which health, safety, or access to important benefits and services are at stake, the YHA will generally offer, or ensure that the family is offered through other sources, competent services free of charge to the LEP person.

#### YHA Policy

The YHA will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken. “Reasonable steps” may not be reasonable where the costs imposed substantially exceed the benefits.

Where feasible, the YHA will hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents. Where feasible and possible, the YHA will encourage the use of qualified community volunteers.

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the YHA. The interpreter may be a family member or friend.

### **2-III.C. WRITTEN TRANSLATION**

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

#### YHA Policy

In order to comply with written-translation obligations, the YHA will take the following steps:

The YHA will provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered in the YHA’s jurisdiction. Translation of other documents, if needed, can be provided orally; or

If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, the YHA does not translate vital written materials, but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These “safe harbor” provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and reasonable.

YHA will use the written documents supplied by HUD, whenever possible. All documents will be clearly marked “ For Informational Purposes Only”. All documents that will be executed for the files and program requirements will be in English.

## **2-III.D. IMPLEMENTATION PLAN**

After completing the four-factor analysis and deciding what language assistance services are appropriate, the YHA shall determine whether it is necessary to develop a written implementation plan to address the identified needs of the LEP populations it serves.

If the YHA determines that it is not necessary to develop a written implementation plan or Language Access Plan (LAP), the absence of a written plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to the YHA's Housing Choice Voucher program and services.

### YHA Policy

If it is determined the YHA serves very few LEP persons, and the YHA has very limited resources, the YHA has not developed a written LAP, but will consider alternative ways to articulate in a reasonable manner a plan for providing meaningful access. If YHA determines that it serves or is under-serving LEP persons because of language barriers and YHA has the available resources, then YHA will develop a LAP. YHA will use entities having significant contact with LEP persons, such as DSS, schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants. These entities will be contacted for input into the process.

If the YHA determines it is appropriate to develop a written LAP, the following five steps will be taken: (1) Identifying LEP individuals who need language assistance; (2) identifying language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the LAP.

## **PART IV: A SUPPLEMENTAL INFORMATION TO APPLICATION FOR ASSISTANCE REGARDING IDENTIFICATION OF FAMILY MEMBER, FRIEND OR OTHER PERSON OR ORGANIZATION SUPPORTIVE OF A TENANT FOR OCCUPANCY IN HUD ASSISTED HOUSING**

### **2-IV.A. OVERVIEW (PIH 2012-22)**

Section 644 of the Housing and Community Development Act of 1992 (42 U.S.C. 13604) imposed on HUD the obligation to require housing providers participating in federally assisted housing programs to give any individual or family applying for occupancy the option to provide additional contact information as part of their application. The contact information included in the application for occupancy is the name, address, telephone number, and other relevant information of a family member, friend, or person associated with a social, health, advocacy, or similar organization. The YHA may not require the applicant to provide such information.

The objective of providing such information, if the applicant becomes a tenant, is to facilitate contact by the housing provider with the person or organization identified to assist in providing any delivery of services or special care to the tenant and to assist with resolving any tenancy issues arising during their tenancy. This supplemental application information is to be maintained by the YHA as confidential information.

## 2-IV. B IMPLEMENTATION REQUIREMENTS

- A. The YHA must implement the requirements of Section 644 and begin using form HUD-92006, Supplement to Application for Federally Assisted Housing.
- B. The YHA must notify applicants at the time of application of their right to include as part of their application the name, address, telephone number and other relevant information of a family member, friend, or social, health, advocacy or other organization. This individual or organization may be contacted by the YHA to help in resolving issues that may arise during the applicant's tenancy or to assist in providing special care or services the applicant may require as a tenant.
- C. Form HUD-92006, Supplement to Application for Federally Assisted Housing.
  1. Form HUD-92006 must be included as an attachment YHA's application.
  2. Applicants
    - Applicants must be provided the opportunity to complete the information on form HUD-92006, Supplement to Application for Federally Assisted Housing. The form gives applicants the option to identify an individual or organization that the YHA may contact and the reason(s) the individual or organization may be contacted. The applicants, if they choose to provide the additional contact information, must sign and date the form.
    - YHA **cannot** require any individual or family applying for occupancy to provide the contact information as providing contact information is optional on the part of the individual or family. Those applicants who choose not to provide the contact information should check the box indicating that they "choose not to provide the contact information" and sign and date the form.
    - YHA will provide applicants the opportunity at time of admission to update, remove or change contact information provided at the time of application, particularly if a long period of time has elapsed between the time of application and actual admission to the program.
    - If the applicant chooses to have more than one contact person or organization, the applicant must make clear to the YHA the reason each person or organization may be contacted. The YHA will accommodate the applicant by allowing the applicant to complete a form HUD-92006 for each contact and indicating the reason the YHA may contact the individual or organization. For example, the applicant may choose to have a relative as a contact for emergency

purposes and an advocacy organization for assistance for tenancy purposes.

3. Tenants.

- Although it is not required, YHA will provide tenants who were not provided the opportunity to provide contact information at the time of application and admission, the option to complete form HUD-92006 and provide contact information at the time of their next annual reexamination/recertification.
- YHA **cannot** require tenants who have not provided contact information to provide the contact information at the time of annual recertification as providing this information is optional on the part of the individual or family.
- Tenants may request to update, remove or change the information provided on form HUD-92006 at any time and the YHA must honor this request.
- YHA will tenants who have provided contact information using form HUD-92006, the opportunity to update, remove or change the information at the time of annual recertification to ensure that current information is on file. This includes allowing tenants who originally chose not to provide contact information the opportunity to provide contact information if they request to do so.

#### **2-IV. C. USE OF THE CONTACT INFORMATION**

YHA will contact the individual or organization provided only for the use or uses indicated by the applicant or tenant on form HUD-92006. This contact information will assist the YHA in providing the delivery of any services or special care to the tenant and assist in any tenancy issues arising during the term of tenancy of the tenant.

#### **2-IV. D. RETENTION OF CONTACT INFORMATION (FORM HUD 92006)**

YHA must retain the form HUD-92006 with the applicant's application.

YHA must retain the information for as long as the tenant is a resident. YHA will follow program retention requirements for retention of tenant files after end of participation in the program or after move-out. YHA is required to retain tenant file information for term of tenancy plus three years.

#### **2-IV. E. CONFIDENTIALITY OF CONTACT INFORMATION**

Section 644 requires that YHA keep the contact information confidential. YHA is allowed to

release the information for the stated statutory purpose only which is to assist the YHA in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants.

#### **2-IV. A. PRIVACY RIGHTS**

Applicants and participants, including all adults 18 years or older in their households, are required to sign the HUD 9886 Authorization for Release of Information/Privacy Act Notice. This document incorporates the Federal Privacy Act Statement and describes the conditions under which HUD will release family information.

It is the YHA policy that client files as well as participant and owner information are closed to public access to the fullest extent permitted by State law.

The YHA's policy regarding release of information is in accordance with State and local laws which may restrict the release of family information.

- To release pertinent client information only in accordance with a properly executed release form
- To release information relative to claims not reimbursed and/or outstanding over subsidy amounts where there is no current re-payment agreement.
- To release information by the authorization of the Executive Director and written consent of the affected party or pursuant to a court subpoena.

Any and all information which would lead one to determine the nature and/or severity of a person's disability must be kept in a separate folder and marked "confidential". The personal information in this folder must not be released except on an "as needed" basis in cases where an accommodation is under consideration. All requests for access and granting of accommodations based on this information must be approved by the HCV Program Director.

The YHA's practices and procedures are designed to safeguard the privacy of applicants and program participants. All applicant and participant files will be stored in a secure location that is only accessible only by authorized staff.

YHA staff will not discuss family information contained in files unless there is a business reason to do so.

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

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

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

The phrase “physical or mental impairment” includes:

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

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

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

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

The definition of a person with disabilities does not include:

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

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

disability is not entitled to a reasonable accommodation under federal civil rights and fair housing laws and regulations.

The HUD definition of a person with a disability is much narrower than the civil rights definition of disability. The HUD definition of a person with a disability is used for purposes of receiving the disabled family preference, the \$400 elderly/disabled household deduction, the \$480 dependent deduction, the allowance for medical expenses, or the allowance for disability assistance expenses.

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

## **Chapter 3**

### **ELIGIBILITY**

#### **INTRODUCTION**

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

In the case of disputes on eligibility/ineligibility criteria that are pending the outcome of legal proceedings (i.e., currently under appeal in a court of law), the YHA will determine the family to be ineligible at that time. If the legal decision is rendered that the person did meet the eligible factors, the YHA shall restore the application to the original date and time, and reinstate the applicant to any other preference factors that the YHA has adopted. If the legal decision is rendered that the person did not meet the eligibility factors, the YHA shall only provide the applicant with access to the grievance process in accordance with applicable requirements.

To be eligible for the HCV program:

- The applicant family must:
  - Qualify as a family as defined by HUD and the YHA.
  - Have income at or below HUD-specified income limits.
  - Qualify on the basis of citizenship or the eligible immigrant status of family members.
  - Provide social security number information for family members as required.
  - Consent to the YHA's collection and use of family information as provided for in YHA-provided consent forms.
  - Not be ineligible due to criminal or other ineligible conduct.
  - Not be ineligible for assistance in accordance with the restrictions on assistance to students enrolled in an institution of higher education status (24 CFR 5.612)\*.
  - Meet other YHA or HUD requirements
  - The applicant must not have committed fraud while on any assisted federal program
- The YHA will determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the YHA.
- In order to be eligible for the voucher, prior to the issuance of the voucher, the family must verify that in the case of tenant paid utilities, the family must be capable of having the utilities turned on the name of the head-of-household, spouse, or co-head.

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**\*Restrictions on Assistance to Students Enrolled In Institution of Higher Education**

No assistance shall be provided under Section 8 of the 1937 Act to any individual who:

- Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965;
- Is under 24 years of age;
- Is not a veteran of the United States military;
- Is unmarried;
- Is not a person with disabilities and was not receiving assistance as of November 30, 2005;
- Does not have a dependent child; and
- Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under Section 8 of the 1937 Act.

**Ineligibility/Termination of Users of Medical Marijuana or For Other Use**

According to HUD opinion, marijuana is a Federally controlled substance and the YHA must establish standards that "prohibit admission to federally assisted housing for any household with a member who the YHA/owner determines is illegally using a controlled substance" (should be in your Administrative/ACOP plans). While it may be legal in the State, Federal law prevails and YHA does not recognize or allow the use of marijuana at the time of admission, nor anytime for continued occupancy. Applicants will not be allowed the use of marijuana for any reason, and participants will be terminated for use of this and any other controlled substances.

**See Exhibit 3-2: Detail on Student Eligibility** for further clarification.

This chapter contains three parts:

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

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

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

**PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS**

**3-I.A. OVERVIEW**

Some eligibility criteria and program rules vary depending upon the composition of the family requesting assistance. In addition, some requirements apply to the family as a whole and others

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apply to individual persons who will live in the assisted unit. This part provides information that is needed to correctly identify family and household members, and to apply HUD's eligibility rules.

**3-I.B. FAMILY AND HOUSEHOLD [24 CFR 982.201(c), 24 CFR 5.504, 24 CFR 5.403, 24 CFR 5.100, FR Notice 2-3-12 and PIH Notice 2014-20]**

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

**Family**

To be eligible for assistance, an applicant must qualify as a family. *Family* as defined by HUD includes, but is not limited to the following, regardless actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, disabled person, near-elderly person, or any other single person; or a group of persons residing together. Such group includes, but is not limited to a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family), an elderly family, a near-elderly family, a disabled family, a displaced family, or the remaining member of a tenant family. The YHA has the discretion to determine if any other group of persons qualifies as a family.

The applicant must qualify as a Family. A family may be a single person or a group of persons. Discrimination on the basis of familial status is prohibited, and a group of persons may not be denied solely on the basis that they are not related by blood, marriage or operation of law. For occupancy standards purposes, the applicant may claim a spousal relationship.

A group of persons is defined by YHA as two or more persons who intend to share residency, and whose income and resources are available to meet the family's needs, and will live together in YHA housing.

**Family** includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

- (1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or
- (2) A group of persons residing together, and such group includes, but is not limited to:
  - (a) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
  - (b) An elderly family;
  - (c) A near-elderly family;
  - (d) A disabled family;
  - (e) A displaced family; and
  - (f) The remaining member of a tenant family.

An expectant mother with no children will qualify for assistance as a *family*.

**Gender Identity** means the gender with which a person identifies, regardless of the sex assigned to that person at birth and regardless of the person's perceived gender identity. Perceived gender

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identity means the gender with which a person is perceived to identify based on that person's appearance, behavior, expression, other gender related characteristics, or sex assigned to the individual at birth or identified in documents.

**Sexual orientation** means homosexuality, heterosexuality, or bisexuality.

**Disabled family** means a family whose head (including co-head), spouse, or sole member is a person with a disability. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

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

**Elderly family** means a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

**Near-elderly family** means a family whose head (including co-head), spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62, living with one or more live-in aides.

**Live-in aide** means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

- (1) Is determined to be essential to the care and well-being of the persons;
- (2) Is not obligated for the support of the persons; and
- (3) Would not be living in the unit except to provide the necessary supportive services.

**Household** means the family and a YHA-approved live-in aide. A household may also include additional, other people who, with the YHA's discretionary permission, live in an assisted unit such as foster children and foster adults.

**Tenant** means an individual or a family renting or occupying an assisted dwelling unit.

### YHA Policy

A family also includes two (2) or more persons who intend to share residency whose income and resources are available to meet the family's needs and who have a history as a family unit or show evidence of a stable family relationship for at least one year.

Evidence of a stable family relationship may include any of the following: birth certificates of the children indicating common children, joint tax returns, prior lease (held jointly), joint bank accounts, insurance policies indicating common status.

A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law but who either can demonstrate that they have lived

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together previously or certify that each individual's income and other resources will be available to meet the needs of the family.

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

Children temporarily absent from the home due to placement in foster care are considered family members. This provision only pertains to the foster child's temporary absence from the home, and is not intended to artificially enlarge the voucher size for other family members.

At the time of admission, children in the process of being adopted are considered family members for the purpose of determining bedroom size, but not considered family members for determining income limit.

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

#### **Family Break-up [24 CFR 982.315]**

The YHA has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up. However, if the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the YHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, and stalking, see section 16-IX.D of this plan.)

If a court determines the disposition of property between members of the assisted family in a divorce or separation under a settlement or judicial decree, then YHA is bound by the court's determination of which family members continue to receive assistance in the program provided that such members otherwise meet all eligibility criteria, and are not otherwise disqualified, to receive assistance at the time said settlement or judicial decree is made or entered. YHA may require a new application to determine eligibility. A settlement or judicial decree determining assistance shall not otherwise bind YHA to offer or continue assistance to a family member who is either ineligible or later becomes ineligible to receive assistance.

#### YHA Policy

A family break-up means that that a relationship among spouses, partners, or co-heads, as defined herein, is in the process of ending or is irretrievably broken and there has been some action taken consistent with the ending or breaking-up of the relationship, such as a spouse, domestic partner, or co-head moving out or separating for an extended period of time, taking up another residence, and/or legal process being taken to dissolve a relationship. YHA may determine whether a family break-up has occurred or is in the process of occurring based upon the facts and circumstances discovered by or made known to YHA.

When a family break-up occurs, YHA may consider the following factors in making a decision as to which members of an assisted family will continue to receive assistance:

- (1) Whether the assistance should remain with family members remaining in the original assisted unit.

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- (2) The interest of minor children, including custody arrangements.
  - (3) The interest of ill, elderly, or disabled family members.
  - (4) Whether family members are forced to leave the unit as a result of actual or threatened domestic violence, dating violence, sexual assault, or stalking.
  - (5) Whether any of the family members are receiving protection as victims of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and whether the abuser is still in the household.
  - (6) Any possible risks to family members as a result of criminal activity.
  - (5) The recommendations of social service professionals.
  - (7) Individuals' and families' own histories of lease compliance, rules compliance, and interactions with YHA staff.
  - (8) Any other information YHA deems relevant to the decision making process for purposes of determining which members of an assisted family will continue to receive assistance.

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

If a family breaks up into two otherwise eligible families while receiving assistance, only one of the new families will continue to be assisted.

Documentation of these factors is the responsibility of the applicant families. If either or both of the families do not provide the documentation within 10 working days of the change of family composition, both may be denied placement on the waiting list.

#### **Remaining Member of a Tenant Family [24 CFR 5.403, PIH 2010-50 and updates]**

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

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

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 aforementioned 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.

When the HOH dies and the only remaining household member is the live-in aide, the live-in aide is not entitled or eligible for any rental assistance or continued occupancy in a subsidized

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unit. By definition, the live-in aide would not be living in the subsidized unit except to provide the necessary supportive services on behalf of the elderly or disabled HOH. The YHA may not designate the live-in aide as the new HOH or change the relation code (line item 3h on the form HUD-50058) of the live-in aide to make him or her an eligible household member (eligible for assistance) nor pay HAP on behalf of the live-in aide for any month after the month in which the HOH died.

If the HOH is deceased and the remaining household members are minors, the YHA has an established policy for dealing with situations when the HOH dies during tenancy and the remaining household members are minors. They will use a common practice of PHAs that includes (but is not limited to) allowing a temporary adult guardian to reside in the unit until a court-appointed guardian is established.

In accordance with its screening policies, the YHA may add the new guardian as the new HOH and will work with the local Department of Social Services to ensure that the best interests of the residuals are addressed.

The live-in aide or live-in aide's members can never be considered a residual.

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

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

#### YHA Policy

The family may designate any qualified adult family member as the head of household.

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

### **3-I.E. SPOUSE, PARTNER, CO-HEAD, AND OTHER ADULT**

A family may have a spouse or co-head, but not both. See, HUD-50058 IB, p. 13.

**Spouse** means the marriage partner of the head of household, that is, a husband, wife, or same-sex spouse. Spouses are legally recognized as married persons under the laws of the jurisdiction where said marriage occurred and may include common law marriage. The term "spouse" does not include domestic partners, boyfriends, girlfriends, significant others, or co-heads of households. A minor who is emancipated under state law may be designated as a spouse.

**Domestic partner** or **domestic partners** and similar variations means persons who are not spouses and are not regarded as having been married under the laws of any jurisdiction but are regarded as having similar rights and obligations arising under the laws of the jurisdiction in which they reside. Domestic partners are two persons who have a stable, marital-like relationship

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where both persons have cohabited for a significant period of time with the knowledge that they are not married. Domestic partners may be recognized as having a civil union, a domestic partnership, and/or a meretricious relationship. The terms “domestic partner” and “domestic partners” do not include spouses, boyfriends, girlfriends, significant others, or co-heads of households. A minor who is emancipated under state law may be designated as a partner.

**Co-head** means an adult individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, but who is not a spouse or domestic partner. A family can have only one co-head. A family may designate either one spouse as the single head of household, or two co-heads who are not spouses, but not both. A co-head cannot be a dependent. A minor emancipated under state law may be designated as a co-head.

**Other relationships** mean those relationships that would not be recognized under the law of the jurisdiction in which the adults reside as a marital relationship or a domestic partnership relationship. This includes “boyfriend/girlfriend” or “significant other” relationships or other forms of friendship or acquaintance, whether platonic or intimate, where the persons would not be considered “spouses” or “partners”. Friends, acquaintances, boyfriends, girlfriends, significant others and the like are guests as defined herein.

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

#### YHA Policy

Minors who are emancipated under state law may be designated as a co-head.

Domestic partners may be designated as co-heads but not as spouses or the spouse of the head of household.

Persons who have an “other relationship” with a family member, and who have not been designated as a co-head of household, are not family members but rather are guests.

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

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

### **Joint Custody of Dependents**

#### YHA Policy

When both parents are assisted under the Section 8 Rental Assistance Programs and both parents are trying to claim the child, the parent whose address is listed in the school records will be allowed to claim the school-age child as a dependent.

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 51 percent or more of the time.

Children who are not registered in a school program, including preschool, who are subject to a

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joint custody agreement but live in the unit at least 51% of the time will be considered members of the household. "51% of the time" is defined as 183 days of the year, which do not have to run consecutively.

For children who are not registered in school, the custodial parent for tax purposes will be considered the custodial parent in determining which family claims the child as a dependent for purposes of household composition, subsidy standards and total tenant payment calculation.

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

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

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

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

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

#### **Elderly Persons**

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

#### **Near-Elderly Persons**

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

**For Admission purposes as defined-** *Near elderly* households are families whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 year of age but below the age of 62 living with one or more live-in aide.

#### **Elderly Family**

An *elderly family* is one in which the head, spouse, co-head, or sole member is an elderly person; two or more individuals above the age of 62 that are residing together, or one or more persons above the age of 62 residing with one or more live-in aides. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6.

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### 3-I.I. PERSONS WITH DISABILITIES, DISABLED FAMILY, LIVE-IN AIDE [24 CFR 5.403]

#### Disabled Household

For the purposes of the YHA, the term "disabled household" will mean a household where the head of household, spouse or co-head is a person with a disability

**A person with disabilities** means a person who (i) has a disability, as defined in 42 U.S.C. 423; (ii) is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that is (A) Is expected to be of long-continued and indefinite duration; (B) Substantially impedes his or her ability to live independently, and (C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or (iii) Has a developmental disability as defined in 42 U.S.C. 6001.

A person with disabilities does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. A person with disabilities, for purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence. A person with disabilities also means "individual with handicaps", as defined in 24 CFR 8.3, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or co-head is a person with disabilities.

#### Persons with Disabilities

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

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

#### Disabled Family

**Disabled Family** means a family whose head (including co-head), spouse, or sole member is a person with a disability. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6.

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

### Live-In Aide

See, Section 3-I.M below

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

**Guest** means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

#### YHA Policy

A guest can remain in the assisted unit no longer than fourteen (14) consecutive days or a total of 30 cumulative calendar days during any 12-month period.

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted household more than 51 percent of the time, are not subject to the time limitations of guests as described above.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure that is expected to last 40 consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

### **3.I.K. FOSTER CHILDREN AND FOSTER ADULTS**

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

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

Foster children and foster adults that are living with an applicant or assisted family are considered household members but not family members. The income of foster children/adults is not counted in family annual income and foster children/adults do not qualify for the \$480 dependent deduction [24 CFR 5.603 and HUD-50058 IB, p. 13]. Foster children and foster adults that are permitted to occupy the dwelling unit will be used to determine the voucher size for assistance.

#### YHA Policy

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

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

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With the prior written consent of the YHA, a foster child/foster adult may be added to the Section 8 participant family. The factors considered by the YHA in determining whether or not consent is granted may include:

- Whether the addition of a new occupant may require the issuance of a new voucher, and whether such voucher subsidy is available.
- The Section 8 landlord's written approval of the additional persons being added to the lease.

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

### **3-I.L. ABSENT FAMILY MEMBERS**

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

#### **Definitions of Temporarily and Permanently Absent**

##### YHA Policy

Generally, an individual who is or is expected to be absent from the assisted unit for 3 consecutive months or 90 calendar days in a 12-month period or less is considered temporarily absent and continues to be considered a family member. Generally, an individual who is or is expected to be absent from the assisted unit for more than 3 consecutive months or 90 calendar days in a 12-month period is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

#### **Absent Students**

##### YHA Policy

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the YHA indicating that the student has established a separate household or the family declares that the student has established a separate household.

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

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

##### YHA Policy

In instances in which the children have been removed from the home by a social service agency, the agency will be contacted to determine the approximate length of time the children are expected to be away from the home.

If a child has been placed in foster care, the YHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency

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confirms that the child has been permanently removed from the home, the child will be counted as a family member.

If the agency indicates that the children are expected to return to the home at some point, the children will remain a part of the family composition and will be counted toward the family's subsidy standard, but will not be counted as dependents until they return to the home.

If the children are not ever expected to be returned to the home, the children will be removed from the family composition and the family's subsidy standard will be reduced accordingly at the next annual review.

If the agency indicates that it is unknown whether the children will be returned to the home, the children will remain a part of the family composition.

Failure, by the family, to report the absence of the children may result in termination from the program.

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

#### YHA Policy

When a single parent is absent from the household for an extended period (60 days) as a result of imprisonment, etc. and another adult moves into the home to care for the remaining members, the rental assistance may be terminated. In extenuating cases where the YHA approves the temporary absence, the family composition may be modified to include the name of the temporary guardian as temporary head of household. The PHA shall screen the guardian under the same criteria that it screens a live-in aide. The temporary guardian's income will not be included in the family income. The single parent's name as head of household shall be temporarily removed and the file documented to explain the circumstances.

When the single parent returns to the unit, the guardian will vacate the unit, unless further documentation of need is verified. If the guardian remains after the return of the head of household and does not become a live-in aide, his/her income will be included in the calculation of family income. In addition to all the above, the guardian will be responsible for obtaining the owner's/landlord's approval before occupying the unit.

YHA will review the reason why the head of household is no longer present and may make a determination to cancel the assistance.

If all members of the household are absent for thirty (30) cumulative days during a calendar year, but have not moved from the unit, assistance will be terminated. In order to determine if the family is absent from the unit, YHA may secure various forms of verification including but not limited to: notice and letters to the family at the unit, telephone the family at the unit, interview the owner/landlord and neighbors, and/or verify if utilities are in service. In cases where the family has moved from the unit, assistance will be terminated in accordance with the procedures set forth further in this plan.

When the family consists of only one member and that person vacates the unit to go into a hospital or nursing home for a period of more than two (2) months, the assistance will

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be terminated, if the person will not be returning within 60 days. If a medical source documents that the person is expected to return to the unit in 180 days or less, the person shall continue to receive assistance. If the person is not back in the unit within 180 days, assistance will be terminated.

### **Absent Spouse, Domestic Partner, or Co-head—Family Break-up**

#### YHA Policy

If a spouse, domestic partner, or co-head is absent from the household for a period of thirty consecutive days, or forty-five days in a calendar year, and if there is some additional indicia that the family is breaking up, such as a spouse taking up another residence, initiating legal proceedings to resolve the relationship, or representing to YHA that the relationship is breaking up, then YHA may consider the situation to be a family break-up and then determine which family members will continue to receive assistance as set forth above.

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

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

#### YHA Policy

The YHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. If temporarily absent, the income of the person will be included. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member and be removed from the lease and voucher.

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

#### YHA Policy

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

### **3-I.M. LIVE-IN AIDE (24 CFR 5.403, 24 CFR 5.609, PIH 2010-51 and PIH 2013-13)**

**Live-in aide** means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons, (2) is not obligated for the support of the persons, and (3) would not be living in the unit except to provide the necessary supportive services. It should be noted that the definition applies to a specific person (i.e., identified live-in aide).

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

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A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations under 24 CFR 5.609(b). Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. However, current members of the family cannot be reclassified as a live-in aide to have income excluded. A relative or any other live-in aide or live-in aides family who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family. A live-in aide has no rights or benefits under the program.

### YHA Policy

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member. Although a health care provider must document the need for a live-in aide (which would result in the issuance of an additional bedroom size voucher), the live-in aide must be identified by the family and approved by the YHA first. For continued approval, the family must submit a new, written request-subject to YHA verification-at each annual reexamination.

The YHA may only approve one additional bedroom for a live-in aide. Although a live-in aide may have YHA-approved family member/s live with him/her in the assisted unit, no additional bedrooms will be provided for the family members of the live-in aide. The YHA must ensure that housing quality standards (HQS) will not be violated and that there will be no more than two people per bedroom or living/sleeping space in the unit in accordance with 24 CFR 982.401(d)(2)(ii). If the approval of additional family members of a live-in aide would result in the violation of HQS, the additional family members of the live-in aide may not be approved.

A live in aide may only reside in the unit with pre-approval from the YHA, after proper documentation of need is verified and screening has been completed.

The approval of a live-in aide shall increase the maximum permitted voucher size by 1-bedroom to accommodate the need for a live-in aide.

In addition, the family and live-in aide will be required to submit a certification stating that the live-in aide is (1) not obligated for the support of the person(s) needing the care, and (2) would not be living in the unit except to provide the necessary supportive services. The live-in aide and family will execute an acknowledgement that they are a live-in aide and they have no rights to the program.

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

The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

The person commits drug-related criminal activity or violent criminal activity; or

The person currently owes rent or other amounts to the YHA or to another HA in connection with Section 8 or public housing assistance under the 1937 Act.

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The person has violated any family obligations under the program as published under CFR 982.551;

The person has been convicted of manufacturing or producing methamphetamine, on the premises of an assisted housing project;

The person has been evicted from any federally subsidized housing program for any reason;

The person has been identified as someone who has to register as a sex offender.

The person cannot provide a current valid social security number, if needed.

The person fails to provide documentation to permit the YHA to conduct the required screening.

The person is not qualified to provide the needed care.

Within 10 business days of receiving a request for a live-in aide, including all required documentation related to the request, the YHA will be required to screen the live-in aide in accordance with the federal regulations and upon final determination will notify the family of its decision in writing.

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

### **3-II.A. INCOME ELIGIBILITY AND TARGETING**

#### **Income Limits**

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

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

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

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

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

Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

#### **Using Income Limits for Eligibility [24 CFR 982.201]**

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

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

#### YHA Policy

The YHA will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time they were issued a voucher by the YHA.

- A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173
- A low-income family that is displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing as defined in 24 CFR 248.101
- A low-income family shall be used to determine the income limit for an eligible student and their parents in accordance with the ineligible student provisions.
- For Project-based units that converted through RAD.

HUD permits the YHA to establish additional categories of low-income families that may be determined eligible. The additional categories must be consistent with the YHA plan and the consolidated plans for local governments within the YHA's jurisdiction.

#### YHA Policy

The YHA has established additional categories of eligible low-income families, and will use the income limit of 80% of median income for eligibility of project-based units that converted through RAD. In the case of tax credits that are part of the RAD financing, the YHA will use 60% of median income for eligibility.

#### **Using Income Limits for Targeting [24 CFR 982.201]**

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

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

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Extremely low-income family. A very low-income family whose annual income does not exceed the higher of:

(1) The poverty guidelines established by the Department of Health and Human Services applicable to the family of the size involved (except in the case of families living in Puerto Rico or any other territory or possession of the United States); or

Thirty (30) percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the area median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

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

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

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

#### **Declaration [24 CFR 5.508]**

HUD requires each family member to declare whether the individual is a citizen, a national, or a noncitizen with eligible immigration status, except those members who elect not to contend that they have eligible immigration status. Those who elect not to contend their status are considered to be ineligible noncitizens. For adult citizens, nationals and eligible noncitizens the declaration must be signed by each adult. For child citizens, nationals, and eligible noncitizens, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for each child. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

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

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

#### **YHA Policy**

Family members who declare citizenship or national status will be required to provide additional documentation such as a birth certificate or other legal document.

#### ***Eligible Non-citizens***

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

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

Residents that received immunity under the Presidential Declarations

### ***Ineligible Non-citizens***

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

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

### **Mixed Families**

A family is eligible for assistance as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be prorated, and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 16 for a discussion of informal hearing procedures.

### **Ineligible Families [24 CFR 512(a) and (b); 24 CFR 5.514(d), (e), and (f)]**

YHA may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member [24 CFR 5.512(b)]. Otherwise, no individual or family may be assisted prior to the affirmative establishment by the YHA that the individual or at least one family member is eligible [24 CFR 5.512(a)].

### **YHA Policy**

The YHA will not provide assistance to a family before the verification of at least one family member. The eligible member does not have to be an adult in order for the YHA to assist the family.

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

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

Informal hearing procedures are contained in Chapter 16.

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

For new occupants joining the assisted family the YHA will be verified at the time they are added to the household.

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

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

### **YHA Policy**

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

### **3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218] and PIH 2010-3 and PIH 2011-2, and PIH 2012-10 and streamlining]**

Families are required to provide verification of Social Security Numbers for all family members if they have been issued a number by the Social Security Administration. This requirement also applies to persons joining the family after admission to the program.

Failure to furnish verification of social security numbers is grounds for denial of admission or termination of tenancy.

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

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

### **SSN Disclosure**

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

- Those individuals who do not contend to have eligible immigration status (individuals who may be unlawfully present in the United States). These individuals in most instances would not be eligible for a SSN.
  - A family that consists of a single household member (including a pregnant individual) who does not have eligible immigration status is **not eligible** for housing assistance and cannot be housed.
  - A family that consists of two or more household members **and at least one** household member that has eligible immigration status, is classified as a mixed family, and **is eligible** for prorated assistance in accordance with 24 CFR 5.520. The YHA may **not** deny assistance to mixed families due to nondisclosure of an SSN by an individual who does not contend to have eligible immigration status.
- Existing program participants as of January 31, 2010, who have previously disclosed their SSN and HUD has determined the SSN to be valid. The YHA may confirm HUD's validation of the participant's SSN by viewing the household's *Summary Report* or the *Identity Verification Report* in the EIV system.
- Existing program participants as of January 31, 2010, who are 62 years of age or older, and had not previously disclosed a valid SSN. This exemption continues even if the individual moves to a new assisted unit.

Disclosure of SSNs is considered information subject to the Federal Privacy Act (5 USC 552a, as amended). In accordance with 24 CFR 5.212, the collection, maintenance, use, and dissemination of SSNs, any information derived from SSNs and income information must be conducted, to the extent applicable, in compliance with that Act and all other provisions of Federal, State, and local law.

There is no provision under HUD regulations which prohibit an individual (head of household with other eligible household members) with ineligible immigration status from executing a lease or other legally binding contract. However, some state laws prohibit an individual with ineligible immigration status from executing a contract (i.e. lease or other legal binding documents). If this is the case in your state, the family must **not** be admitted into the program.

### **Penalties for Failure to Disclose and/or Provide Documentation of the SSN**

In accordance with 24 CFR 5.218, the following penalties apply for noncompliance with the SSN disclosure and documentation requirements:

- a. **Applicants.** The YHA must deny the eligibility of an assistance applicant if s/he (including each member of the household required to disclose his/her SSN) does not disclose a SSN and/or provide documentation of such SSN. However, if the family is otherwise eligible to participate in the program, the family may maintain his/her position on the waiting list for a period of time as determined by the YHA. The YHA should prescribe in its policies, the maximum time the family may remain on the waiting list, pending disclosure of requested information. If all household

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members have not disclosed their SSN at the time a unit becomes available, the YHA must offer the available unit to the next eligible applicant family on the waiting list.

If the YHA determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide the documentation to verify the SSN of each member of the household.

If a child under the age of 6 years was added to the assistance applicant household within the 6-month period prior to the household's date of admission (or, for the HCV program, the date of voucher issuance), the assistance applicant may become a participant, so long as the documentation required is provided to the YHA within 90 calendar days from the date of admission into the program (or, for the HCV program, the effective date of the Housing Assistance Payment contract). The YHA must grant an extension of one additional 90-day period if the YHA determines that, in its discretion, the assistance applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the assistance applicant. If the applicant family fails to produce the documentation required within the required time period, the processing entity must follow the provisions of § 5.218 which includes termination of the family from the program.

- b. **Participants.** The YHA must terminate the assistance of Section 8 program participants (the entire household) and terminate the tenancy of Public Housing participants (the entire household) if s/he (including each member of the household required to disclose his/her SSN) does not disclose his/her SSN and provide the required documentation.

However, if the family is otherwise eligible for continued assistance or tenancy in the program, the YHA, at its discretion, may defer the family's termination and provide the family an opportunity to comply with the requirement within a period **not to exceed** 90 calendar days from the date the YHA determined the family noncompliant with the SSN disclosure and documentation requirement, if the PHA determines:

1. The failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside the control of the family; and
2. There is a reasonable likelihood that the family will be able to disclose the SSN and provide such documentation of the SSN by the deadline.

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**If the family is unable to comply with the requirements by the specified deadline, the YHA must terminate the tenancy or assistance, or both of the entire family.**

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

HUD requires each adult family member, and the head of household, spouse, or co-head, 18 years or older, to sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

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

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

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

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be examined along with the income eligibility of the student's parents. In these cases, both the student and the student's parents must be income eligible for the student to receive HCV assistance. If, however, a student in these circumstances is determined independent from his/her parents in accordance with YHA policy, the income of the student's parents will not be considered in determining the student's eligibility.

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

**Definitions**

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

***Dependent Child***

In the context of the student eligibility restrictions, *dependent child* means a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* in 24 CFR 5.603, which states that the dependent must be a member of the assisted family, other than the head of household or spouse, who is under 18 years of age, or

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is a person with a disability, or is a full-time student. Foster children and foster adults are not considered dependents.

***Independent Student***

YHA Policy

The YHA will consider a student “independent” from his or her parents and the parents’ income will not be considered when determining the student’s eligibility if the following four criteria are all met:

The individual is of legal contract age under state law.

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

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

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

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

Be a veteran of the U.S. Armed Forces

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

Be disabled

Be a graduate or professional student

Be married

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

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

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

***Institution of Higher Education***

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

***Parents***

YHA Policy

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

### ***Person with Disabilities***

The YHA will use the statutory definition under section 3(b)(3)(E) of the 1937 Act to determine whether a student is a *person with disabilities* (see Exhibit 3-1).

### ***Veteran***

#### YHA Policy

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

### **Determining Student Eligibility**

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

#### YHA Policy

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

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

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

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

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

### ***Determining Parental Income Eligibility***

#### YHA Policy

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

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

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

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

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

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

### **PART III: DENIAL OF ASSISTANCE**

#### **3-III.A. OVERVIEW**

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

In addition, HUD requires or permits the YHA to deny assistance based on certain types of current or past behaviors of family members.

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

Denial of assistance includes any of the following:

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

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

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

- Age, handicap, disability, race, color, religion, sex, ancestry or national origin. (See Chapter 2 for additional information about fair housing and equal opportunity requirements.)
- Where a family lives prior to admission to the program
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the YHA's jurisdiction (See Chapter 10, Portability.)
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock

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- Whether the family includes children
  - Whether a family decides to participate in a family self-sufficiency program
  - If the applicant/participant is a victim under the Violence Against Women’s Act (VAWA) provisions.
  - Sexual Orientation

**3-III.B. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING [VAWA 2013]**

The Violence against Women Act of 2013 (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit PHAs from denying an applicant admission to the HCV program “on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking, if the applicant otherwise qualifies for assistance or admission.”

Definitions of key terms used in VAWA are provided in section 16-IX of this plan, where general VAWA requirements and policies pertaining to notification, documentation, and confidentiality are also located.

**Notification**

VAWA 2013 expanded notification requirements to include the obligation for PHAs to provide applicants who are denied assistance with a notice of rights and the form HUD-50066 at the time the applicant is denied.

YHA Policy

The YHA acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under the YHA’s policies. Therefore, if the YHA makes a determination to deny assistance to an applicant family, the YHA will include in its notice of denial the VAWA information described in section 16-IX.C of this plan as well as including a copy of the form HUD-50066. The YHA will request that an applicant wishing to claim protection under VAWA notify the YHA within 10 business days.

- That an applicant or participant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking is not an appropriate reason for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission.

As used in VAWA:

- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

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- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - The length of the relationship
    - The type of relationship
    - The frequency of interaction between the persons involved in the relationship
  - The term *stalking* means:
    - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
    - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
    - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.
  - The term affiliated individual means, with respect to a person: VAWA 2013 defines an “affiliated individual,” with respect to an individual, as a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis, or any individual, tenant, or lawful occupant living in the household of that individual.
  - The term *perpetrator* means a person who commits an act of domestic violence, dating violence or stalking against a victim.

### YHA Policy

The YHA acknowledges that a victim of domestic violence, dating violence, or stalking may have an unfavorable history (e.g. poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under the YHA’s policies. Therefore, if the YHA makes a determination to deny admission to an applicant family, the YHA will include in its notice of denial:

A description of YHA confidentiality requirements

A request that an applicant wishing to claim this protection submit to the YHA documentation meeting the specifications below with her or his request for an informal review (see section 16-II.D)

### **Documentation**

#### **Victim Documentation**

### YHA Policy

If an applicant claims the protection against denial of assistance that VAWA provides to victims of domestic violence, dating violence, sexual assault or stalking, the YHA will

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request in writing that the applicant provide documentation supporting the claim in accordance with section 16-IX.D of this plan.

An applicant claiming that the cause of an unfavorable history is that a member of the applicant family is or has been a victim of domestic violence, dating violence, sexual assault or stalking must provide documentation (1) demonstrating the connection between the abuse and the unfavorable history and (2) naming the perpetrator of the abuse, if known and there is no fear of retaliation. The documentation may consist of any of the following:

A statement signed by the victim certifying that the information provided is true and correct and that it describes bona fide incident(s) of actual or threatened domestic violence, dating violence or stalking.

A police or court record documenting the domestic violence, dating violence, or stalking.

Documentation signed by a person who has assisted the victim in addressed domestic violence, dating violence, or stalking, or the effects of such abuse. This person may be an employee, agent, mental health professional or volunteer of a victim service provider; an attorney; or a medical or other knowledgeable professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in the question are bona fide incidents of abuse. The victim must also sign the documentation.

### **Perpetrator Documentation**

#### YHA Policy

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

A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the assisted unit.

Documentation that the perpetrator has successfully completed, or undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

### ***Time Frame for Submitting Documentation***

#### YHA Policy

The applicant must submit the required documentation with his or her request for an informal review (see section 16-III.D) or must request an extension in writing at that time. If the applicant so requests, the YHA will grant an extension of 10 business days,

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and will postpone scheduling the applicant's informal review until after it has received the documentation or the extension period has elapsed. If after reviewing the documentation provided by the applicant the YHA determines that the family is eligible for assistance, no informal review will be scheduled and the YHA will proceed with admission of the applicant family.

### **YHA Confidentiality Requirements**

All information provided to the YHA regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may either be entered into any shared database nor provided to any relative identity, except to the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

#### YHA Policy

If disclosure for use in an eviction proceeding or is otherwise required by applicable law, the YHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

### **Goals and Objectives**

This policy has the following principal goals and objectives:

- A. Maintaining compliance with all applicable legal requirements imposed by VAWA;
- B. Ensuring the physical safety of victims of actual or threatened domestic violence, dating violence, or stalking who are assisted by YHA;
- C. Providing and maintaining housing opportunities for victims of domestic violence dating violence, or stalking;
- D. Creating and maintaining collaborative arrangements between YHA, law enforcement authorities, victim service providers, and others to promote the safety and well-being of victims of actual and threatened domestic violence, dating violence and stalking, who are assisted by YHA; and

Taking appropriate action in response to an incident or incidents of domestic violence, dating violence, or stalking, affecting individuals assisted by YHA.

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

HUD requires the YHA to deny assistance in the following cases:

- Any member of the household has been evicted from federally-assisted housing in the last 5 years for drug-related criminal activity. HUD permits but does not require the YHA to admit an otherwise-eligible family if the household member has completed a YHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g. the person involved in the criminal activity no longer lives in the household).

#### YHA Policy

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The YHA will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 5 years for drug-related criminal activity, if the YHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the YHA, or the person who committed the crime, is no longer living in the household.

The YHA determines that any household member is currently engaged in the use of illegal drugs.

YHA Policy

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

- The YHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

YHA Policy

In determining reasonable cause, the YHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. The YHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing
- Any household member is subject to a registration requirement under a state sex offender registration program. The YHA will use the Dru Sjodin National Sex Offenders website to confirm that applicants and federal housing assistance recipients are not lifetime registered sex offenders.
- If a family member has been convicted of manufacturing or producing methamphetamine (speed) on an assisted housing site, Section 8 housing, or in Public Housing.
- If the household member is or was engaged in criminal activity that would be detrimental to the program or to the best interest of administration of the program by YHA.

**3-III.D. OTHER PERMITTED REASONS FOR DENIAL OF ASSISTANCE**

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

**Criminal Activity [24 CFR 982.553]**

HUD permits, but does not require, the YHA to deny assistance if the YHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the family would receive assistance, certain types of criminal activity.

YHA Policy

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

*Drug-related criminal activity*, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].

*Violent criminal activity*, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].

Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

**Criminal activity that may threaten the health or safety of property owners, management staff, and persons performing contract administration functions or other responsibilities on behalf of the YHA (including a YHA employee or a YHA contractor, subcontractor, or agent).**

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

Conviction for drug-related or violent criminal activity within the past 5 years.

Circumstantial evidence, a preponderance of evidence, or any arrests for drug-related or violent criminal activity within the past 5 years.

Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 5 years.

If on probation or parole for any conviction, assistance will be denied until discharged from probation or parole.

If incarcerated for any conviction, assistance will be denied until at least five years after release.

Convictions of any household member for crimes of physical violence including but not limited to intentionally or recklessly causing another's death, arson, rape, sexual assault and convictions which require one to register as a sex offender.

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

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

HUD authorizes the YHA to deny assistance based on the family's previous behavior in assisted housing:

#### YHA Policy

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

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The YHA **will** deny assistance to an applicant family if:

The family does not provide information that the YHA or HUD determines is necessary in the administration of the program.

The family does not provide complete and true information to the YHA.

Any family member has been evicted from, had program violations, or has seriously or repeatedly violated any lease terms from any federally assisted housing in the last five years.

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 and denial of assistance is not mandatory. However, YHA will determine whether the family has committed serious or repeated violations of the lease on available evidence and may terminate or deny assistance, require that the household member who participated in or was responsible for the offense no longer reside in the unit or require the family to repay any debt owed.

Serious or repeated lease violations will include, but are not to 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.

Any PHA has ever terminated assistance under the voucher program for any member of the family for violation of the family obligations within the past five years;

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

The family owes rent or other amounts to any PHA, or owner, in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs, unless the family repays the full amount of the debt prior to being selected from the waiting list.

If 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, unless the family repays the full amount of the debt prior to being selected from the waiting list. All family members age eighteen and over must sign HUD-52575 "Debts Owed To Public Housing Agencies and Terminations".

The family has breached the terms of a repayment agreement entered into with the YHA or other PHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.

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A family will be given the opportunity to pay the debt within ninety days of the eligibility interview. If the family fails to meet their obligation to repay the debt, the applicant will be denied assistance.

Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program, or any other federal/state assisted program.

A family member has engaged in or threatened violent or abusive behavior toward YHA personnel in the last 10 years.

*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 deny assistance, the YHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the YHA may, on a case-by-case basis, decide not to deny assistance.

### **3-III.E. SCREENING**

#### **Screening for Eligibility**

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

#### YHA Policy

The YHA will perform a criminal background check through local law enforcement for every adult household member. The YHA will perform a check on the National Sex Offenders web site for every adult household member.

The YHA may require a criminal background check through other law enforcement entities if local information is not available. The YHA may use Tenant PI or 3<sup>rd</sup> party services for screening.

If the results of the criminal background check indicate that there may be past criminal activity, but the results are inconclusive, the YHA will request the applicant to be fingerprinted and will request the information from the National Crime Information center (NCIC).

YHA is required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender

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program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 982.553(a)(2)(i)].

YHA will verify the information provided by the applicant by searching the Dru Sjodin National Sex Offender Database. The Dru Sjodin National Sex Offender Database is an online, searchable database, hosted by the Department of Justice, which combines the data from individual state sex offender registries. The website for the database is located at: <http://www.nsopw.gov>.

A record of this screening, including date performed, will be retained. YHA must destroy the results of the search in accordance with 24 CFR 5.903 (g) unless required by other provisions of the law to retain the documents used to determine eligibility. If required to retain, YHA must retain the results of the search, along with the application, for a period of three years if the applicant is denied housing or, if the applicant is admitted to the program, for the term of tenancy plus three years.

If the YHA proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, the YHA must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information **prior to a denial of admission**. The family will be given 10 business days to dispute the accuracy and relevance of the information. [24 CFR 5.903(f) and 5.905(d)]. The record will be provided to the applicant in person upon presentation of valid government-issued photo identification. The family must be given the opportunity and may remove the life-time sex offender to gain eligibility status for the other members. YHA will require documentation of the removal in accordance with verification requirements.

### **Screening for Suitability as a Tenant [24 CFR 982.307]**

The YHA has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. The YHA may opt to conduct additional screening to determine whether an applicant is likely to be a suitable tenant.

#### YHA Policy

The YHA will not conduct additional screening to determine the applicant's suitability for tenancy.

Criminal background checks will be performed at the following points:

A. Application for assistance

An initial criminal background screening will be performed for all family members as a part of the process of determining apparent eligibility for the Section 8 program. The family will not be wait listed until the family has been determined apparently eligible. Apparent eligibility will not be determined until the YHA has reviewed the results of the criminal background screening.

B. Final Eligibility Determination

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When the family's name comes to the top of the wait list, before the family is offered a voucher, a criminal background screening will be completed to determine whether any violent criminal activity or drug-related criminal activity has occurred between wait listing and final eligibility determination.

**C. Investigation Initiated by a Tip, Referral, or Complaint**

Upon receiving a tip, referral, or complaint, including information left on the YHA Fraud Hotline or other source, a criminal background screening may be performed if it is possible that the screening may provide information pertinent to the investigation.

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

HUD requires the YHA to provide prospective owners with the family's current and prior address (as shown in YHA records) and the name and address (if known) of the owner at the family's current and prior addresses. HUD permits the YHA to provide owners with additional information, as long as families are notified that the information will be provided, and the same type of information is provided to all owners.

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

YHA Policy

The YHA will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, when written request has been received. **The YHA will not provide any additional information to the owner/project-based manager, such as tenancy history, criminal history, credit background, etc.**

**3-III.F. CRITERIA FOR DECIDING TO DENY ASSISTANCE**

**Evidence [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 admission decisions.

*Preponderance of the evidence* is defined as the greater weight of the evidence; that is, evidence that you believe because it outweighs or overbalances in your mind the

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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).

Consider all evidence. In determining whether an issue has been proved by a preponderance of the evidence, you should consider all of the evidence, regardless of who produced it.

Equally balanced. If the weight of the evidence is equally balanced, or if you are unable to determine which side of an issue has the preponderance, the party who has the burden of proof has not established such issue by a preponderance of the evidence.

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

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

#### YHA Policy

The YHA will consider the following factors prior to making its decision:

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

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

VASH will only consider over-income and lifetime sex-offender for ineligibility.

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

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

#### YHA Policy

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

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

The YHA may terminate assistance or an owner/manager may bifurcate the lease to terminate assistance to remove a lawful occupant or tenant who engages in criminal acts of violence to family members or others without terminating assistance/evicting victimized lawful occupants.

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

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

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

#### YHA Policy

If the family indicates the behavior of a family member with a disability is the reason for the proposed denial 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 denial of assistance. See Chapter 2 for a discussion of reasonable accommodation.

## **3-III.G. NOTICE OF ELIGIBILITY OR DENIAL**

### **Eligible for Assistance**

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

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

#### YHA Policy

The family will be notified of a decision to deny assistance in writing within 20 business days of the determination.

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If a YHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the YHA can move to deny the application. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)]. The YHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.553(d)]

YHA Policy

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible the YHA will notify the family in writing of the proposed denial and upon request, will provide a copy of the record to the applicant and to the subject of the record. The family will be given 7 days to dispute the accuracy and relevance of the information. If the family does not contact the YHA to dispute the information within that 7 day period, the YHA will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.

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

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**EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES**

**Person with Disabilities [24 CFR 5.403]**

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

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

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

In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.
- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C.6001(8)], which defines developmental disability in functional terms as:

A severe, chronic disability of a person 5 years of age or older which:

  - Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - Is manifested before the person attains age twenty-two;
  - Is likely to continue indefinitely;
  - Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and responsive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; *and*
  - Reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children, means individuals from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.”
- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

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

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

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

**Individual with Handicaps [24 CFR 8.3]**

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

(1) Physical or mental impairment includes:

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

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

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

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

- (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
- (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
- (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

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Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937

**Summary**

On December 30, 2005, HUD published a final rule (FR-5036-F-01), entitled, "Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937," implementing section 327 of the Appropriations Act of Fiscal Year (FY) 2006.

The final rule became effective January 30, 2006. In brief, the law and final rule require that if a student is enrolled at an institution of higher education, is under the age of 24, is not a veteran, is unmarried and does not have a dependent child, is individually ineligible for section 8 assistance, or the student's parents are, individually or jointly, ineligible for assistance, no section 8 assistance can be provided to the student.

To assist public housing agencies (PHAs) in implementing the new law and final rule, and to ensure that section 8 assistance is provided to those truly in need of and eligible for assistance, the Department issued supplement guidance on April 10, 2006, entitled, "Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplemental Guidance."

Following are two groups of questions and answers: Group I and Group II concerning Section 327 of the Act and the implementing final rule. Group III is definitions.

Group I:

- Section 8 eligibility
- Income determinations
- Rent

Group II:

- Applicability
- Agency policies
- Reexamination of Family Income
- Reexamination of Family Income and Termination of Assistance
- Pro-ration of Assistance

Group III:

- HCV Student Rule Definitions

**Group I: Section 8 Eligibility, Income Determinations, and Rent**

	<b>Section 327 of the FY 2006 Appropriations Act</b>	<b>Final Rule, FR-5036-F-01</b>	<b>Question</b>	<b>Answer</b>
<b>1</b>	Sections 327(a) and (b)	Section 5.612 and 5.609(b)(9)	Do the Act and final rule apply to the Public Housing program?	No. The Act and the implementing final rule (FR-5036-F-01) do not apply to the Public Housing program. The Act and final rule apply only to Section 8 programs.
<b>2</b>	Sections 327(a) and (b)	Section 5.612 and 5.609(b)(9)	Do the Act and final rule apply to students that currently reside with parents in a section 8 rental assisted unit or students applying for section 8 assistance with their parents?	No. The new law and final rule do not apply to these students. The law and final rule focus on students who are under the age of 24, are not veterans, are unmarried, or are without children who seek or receive section 8 assistance separate from their parents.
<b>3</b>	Section 327(a)(1)	Section 5.612(a)	Do the student eligibility requirements apply to full and part-time students who are enrolled at an institution of higher education?	Yes. The eligibility requirements apply to both full and part-time students enrolled at an institution of higher education, as defined under 102 of the Higher Education Act of 1965 (20 U.S.C. 1002).
<b>4</b>	Section 327(a)(1)-(6)	Section 5.612(a)-(f)	Do the Act and final rule provisions mean that a student enrolled at an institution of higher education who is under the age of 24, not a veteran, unmarried, and does not have any dependent children applying for Section 8 assistance in the Section 8 program is ineligible for Section 8 assistance?	Yes. The Act and final rule provisions mean that a student enrolled at an institution of higher education who is under the age of 24, not a veteran, unmarried, and does not have any children <b>IS NOT ELIGIBLE</b> for Section 8 programs, jointly, are income eligible for Section 8 assistance.

	<b>Section 327 of the FY 2006 Appropriations Act</b>	<b>Final Rule, FR-5036-F-01</b>	<b>Question</b>	<b>Answer</b>
<b>5</b>	Section 327(a)(6)	Section 5.612(f)	Concerning the eligibility of parents, individually or jointly, do parents have to meet all HUD program eligibility requirements in order for the student to be eligible for Section 8 housing assistance?	No. Since Section 327 is focused on income eligibility of a higher education student, the Department interprets the section's reference to the eligibility of the parents to also refer to income eligibility.

	<b>Section 327 of the FY 2006 Appropriations Act</b>	<b>Final Rule, FR-5036-F-01</b>	<b>Question</b>	<b>Answer</b>
<b>6</b>	Section 327(a)(6)	Section 5.612(f)	Also concerning the eligibility of parents, individually or jointly, how does the PHA know whether to determine the eligibility of the parents “individually” or “jointly”? Are there any established criteria a PHA may use in making this determination?	<p>PHAs may adopt and implement the following criteria for determining whether to obtain the declaration and certification of income from parents, individually or jointly.</p> <ul style="list-style-type: none"> <li>• If the student’s parents are married and living with each other, obtain the declaration and certification of income from each parent.</li> <li>• If he student’s parent is widowed or single, obtain the declaration and certification of income from that parent.</li> <li>• If the student’s parents are divorced or separated, obtain the declaration and certification of income from each parent.</li> <li>• If the student has been living with one of his or her parents and has not had contact with or does not know where to contact his or her other parent, obtain from the student a certification under penalty of perjury, addressing the circumstances (including a statement hat the student has not received financial assistance from the parent) and obtain from the parent whom the student has been living or has contact with the declaration and certification of income.</li> </ul>
<b>HCV Administrative Plan</b>				<b>3-45</b>

	<b>Section 327 of the FY 2006 Appropriations Act</b>	<b>Final Rule, FR-5036-F-01</b>	<b>Question</b>	<b>Answer</b>
<b>7</b>	Section 327(a)(6)	Section 5.612(f)	In determining the eligibility of the parent(s) to receive assistance, which HUD Income Limit area should the PHA use: the income limit for the area where the student intends to reside, or the income limit for the area where the parent(s) currently resides? For example, if the student is applying for Section 8 housing assistance in Johnson City, Tennessee, but the parent(s) lives in New York City, New York, which HUD Income Limit area should be used in determining the parent(s) program eligibility?	The PHA should use the Income Limit for the area where the parent(s) resides (24 CFR 982.201(b)(4)). In the example provided, the PHA should use the income limit for the area in New York where the parent(s) lives.
<b>8</b>	Section 327(a)(6)	Section 5.612(f)	Which income limit (i.e., extremely low income, very-low income, or low income) should a PHA use in determining the income eligibility of the parent(s)?	Both students and parents must meet the low-income limit.
<b>9</b>	Section 327(a)(6)	Section 5.612(f)	How should the PHA define parents?  What if the student lives with a grandparent, aunt, uncle, guardian, etc., do they have to meet the qualifications also?	For purposes of the student eligibility restrictions, and consistent with longstanding HUD policy regarding eligibility for the section 8 programs, the term “parents” means the biological or adoptive parents, or guardians (e.g., stepparents, grandparents, aunt/uncle, godparents, etc.), or such other definition as may be adopted by the PHA, Owner, or Manager through appropriate amendment to its admissions policies.

	Section 327 of the FY 2006 Appropriations Act	Final Rule, FR-5036-F-01	Question	Answer
10	Section 327(a)(6)	Section 5.612(f)	<p>In admitting college students to Section 8 rental programs, it appears that the PHA will now have to determine the eligibility of the:</p> <ol style="list-style-type: none"> <li>1. Student</li> <li>2. Parent(s), unless the income of demonstrate to the absence of, or his or her independence from Parents</li> <li>3. Student family household</li> </ol>	<p>Correct. The PHA will have to determine the eligibility of each student family member, parents (in cases where the student has not established independence from parents), and the student family household as a unit. For example, three college students applying for Section 8 rental housing assistance, as a family unit, would have to be income eligible for Section 8 assistance (24 CFR 982.201). Also, under 5.612(f), each student individually would have to be eligible and the parent(s) of each student would have to be the student's parents is not relevant or the student can eligible for Section 8 rental assistance, unless the student can show the income of the student's parents is not relevant or the student can demonstrate to the absence of, no financial support from parent(s) or his or her independence from, parents.</p>

	<b>Section 327 of the FY 2006 Appropriations Act</b>	<b>Final Rule, FR-5036-F-01</b>	<b>Question</b>	<b>Answer</b>
<b>11</b>	Section 327(b)	Section 5.609(b)(9)	What exactly are the types of “financial assistance” under the Higher Education Act of 1965 that must be considered as income under Section 327?	Types of financial assistance under the Higher Education Act of 1965 would include: the Pell Grant, the Federal Supplemental Educational Opportunity Grant (FSEOG), Academic Achievement Incentive Scholarships, State assistance under the Leveraging Educational Assistance Partnership Program, the Robert C. Byrd Honors Scholarship Program, and federal Work-Study (FWS) programs. Although considered “financial assistance” under the Higher Education Act of 1965, Perkins loans, Stafford loans, and Plus loans are not considered income for purposes of determining student eligibility for Section 8 housing assistance. For complete information, see Title IV, Part A, under the Higher Education Act of 1965, as amended, located at: <a href="http://www.ed.gov/policy/highered/leg/hea98/index.html">http://www.ed.gov/policy/highered/leg/hea98/index.html</a>
<b>12</b>	Section 327(b)	Section 5.609(b)(9)	Is the income students receive from federal Work-Study (FWS) programs considered earned income for purposes of determining income eligibility?	Yes. It is considered financial assistance under the Higher Education Act of 1965. If its financial assistance under the Act, then it is counted as income under 327.

**Group II: Applicability, Agency Policies, Verifications/Reexaminations, Continuation and Termination of Assistance (24 CFR 982.552(b)(5)).**

	Category	Question	Answer
13	Applicability	Will the students currently participating in HUD's Section 8 program be grandfathered into the program? Does the rule apply to existing Section 8 student participants?	No. Neither section 327 nor the final rule provides for a grandfathering clause for current Section 8 student participants. Therefore, section 327 and the final rule apply to existing Section 8 student participants. However, as previously stated, the law and final rule do not focus on students residing with their parents in a section 8 assisted unit or students who reside with their parents who are applying to receive section 8 assistance. Rather, it focuses on certain students who seek or receive Section 8 assistance separate from their parents.
14	Agency Policies	Do PHAs have to update their Administrative Policies (24 CFR 982.54) before implementing Section 327 and final rule?	Yes. PHAs must immediately update their Administrative Plans to reflect discretionary policies concerning the new income eligibility restrictions for students (24 CFR 982.54).
15	Verifications	Will PHAs now be required to obtain income information on the parents, in determining the eligibility of parents for Section 8 rental assistance?	Yes. To satisfy this requirement, PHAs may accept from a parent (s) a declaration <and> certification of income, which includes a penalty of perjury. The PHA retains the right to request and review, supporting documentation at any time the PHA determines the declaration, certification, and eligibility are in question. Supporting documentation includes, but is not limited to: IRS tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, Temporary Assistance to Needy Families (TANF) award letter, Social Security Administration (SSA) award letter, other official and authentic documents from a federal, State, or local agency.

	Category	Question	Answer
16	Verifications	<p>Since Section 8 assistance can no longer be provided to certain students (24 CFR 5.612), and this may include a parent’s income reexamining eligibility test, does this mean that PHAs will have to verify the parent’s income eligibility annually, during reexamination, to determine whether the student continues to be eligible for the program after admissions? Prior to the effective date of the final rule, PHAs administering Section 8 programs did not have to verify the income of eligibility (i.e., family meets income limits) of the family after admissions.</p>	<p>PHAs administering the Section 8 program will have to verify the income eligibility of the parent(s), at least annually, to determine whether the student remains eligible for the Section 8 program. In accordance with 24 CFR 982.552(b)(5), if after the parent’s income, the student is determined to be ineligible for Section 8 assistance, as specified in 24 CFR 5.612, the PHA must terminate assistance to that family member (i.e., student). Again, the family is entitled to an informal hearing to discuss the termination of assistance.</p>
17	Reexamination of Family Income	<p>The preamble of the final rule “strongly encourages PHAs, Owners, and Management Agents administering Section 8 programs to, as soon as it is practicable, recertify existing Section 8 participants that have family members that may meet the requirements of Section 327 of the Act.” What does this mean? What happens if the PHA cannot recertify Section 8 participants until the family’s next annual recertification? Will the PHA be penalized?</p>	<p>HUD understands that some PHAs may not have the resources or the capability to recertify participant family income until the family’s next annual recertification. However, in order to remedy the problem of ineligible college students participating in HUD’s Section 8 rental assistance programs, as quickly as possible, the Department recommends recertification sooner rather than later (i.e., as soon as it is practicable). If a PHA is unable to recertify family income until the next annual reexamination, that PHA will not be penalized. The latest time, however, that the eligibility and income requirements can be implemented is at the time of annual reexamination.</p>
18	Reexamination of Family Income and Termination of Assistance	<p>As it concerns 24 CFR 982.552(b)(5) of the final rule, if after reexamining a student household’s income (the student’s or parent(s) income), the PHA determines the student is no longer eligible for Section 8 rental assistance, is the student family entitled to a grievance hearing?</p>	<p>Yes. Applicant and participant student households are entitled to request and receive an informal hearing to discuss the reasons for the denial or termination of assistance, in accordance with established program procedures and requirements (See 24 CFR 982.554 and 24 CFR 982.555, respectively).</p>

	<b>Category</b>	<b>Question</b>	<b>Answer</b>
<b>19</b>	Continuation and Termination of Assistance	Scenario I: Three full-time college students apply for Section 8 housing. Two are eligible under Section 327(a) of the Act and 24 CFR 5.612 of the final rule, and one student is ineligible. Does the PHA deny Section 8 rental housing assistance to the entire family—all three students—or can the student family choose to remove the ineligible student from the family application so the two eligible students can be admitted to the program?	In scenario I described, the PHA will notify the applicant student family of its decision to deny assistance to the student household because of one of the student 's ineligibility for Section 8 assistance. The notice will state that the student household may request an informal review of the PHA's decision and how to obtain the review (24 CFR 982.554). During the informal review, the student family may choose to remove the ineligible student from the family application for assistance so that the two eligible students may be admitted to the program. The PHA must notify the student household of the PHA's final decision after the informal review, including a brief statement of the reasons for the final decision.
<b>20</b>	Continuation and Termination of Assistance	Scenario II: Three full-time college students are residing in a Section 8 rental assistance unit. Two are eligible under Section 327(a) of the Act and 24 CFR 5.612 of the final rule, and one student is ineligible. Does the PHA terminate the Section 8 rental assistance to the entire family—all three students—or can the student family choose to remove the ineligible student from the student household so the two eligible students can continue to be assisted under the program.	In scenario II described, the PHA will notify the student household of its decision to terminate Section 8 rental assistance to the family. The notice will contain a brief reason for the PHA's decision (i.e., ineligibility of a college student 24 CFR 5.612) and inform the student household of its right to an informal hearing. For the housing choice voucher (HCV) program, eligible students residing in households with ineligible students shall not have their assistance terminated, but shall be issued a voucher to move with continued assistance in accordance with program regulations or shall be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit. HUD will issue separate guidance for PHAs administering the Moderate Rehabilitation, Project-Based Certificate, and Project- Based Voucher programs.
<b>21</b>	Pro-ration of Assistance	Can the PHA prorate the student household's assistance, based on a percentage of the total number of members of the family household that are eligible for assistance?	No. PHAs may not prorate assistance to family households composed of eligible and ineligible students.

**Group III: HCV Student Rule Definitions**

	<b>Section 327 of the FY 2006 Appropriations Act</b>	<b>Final Rule, FR-5036-F-01</b>	<b>Question</b>	<b>Answer</b>
<b>22</b>	Section 327(a)(1)	Section 5.612(a)	What is the definition of an institution of higher education under section 102 of the Higher Education Act of 1965?	Also provided in Appendix A of the supplemental guidance, a complete definition of an institution of higher education under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) can be found on GPO Access, United States Code Main Page at: <a href="http://www.gpoaccess.gov/uscode/index.html">http://www.gpoaccess.gov/uscode/index.html</a> .
<b>23</b>	Section 327(a)(3)	Section 5.612(c)	What is the definition of a “veteran”?	For purposes of administering the student eligibility restrictions, PHAs may find it useful to adopt the term “veteran” as used by the Department of Veterans Affairs (38 U.S.C. 101(2)): (2) the term “veterans” means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable. A complete definition of veteran (38 U.S.C. 101) can be found on GPO Access, United States Code Main Page at: <a href="http://www.gpoaccess.gov/uscode/index.html">http://www.gpoaccess.gov/uscode/index.html</a> .

	<b>Section 327 of the FY 2006 Appropriations Act</b>	<b>Final Rule, FR-5036-F-01</b>	<b>Question</b>	<b>Answer</b>
<b>24</b>	Sections 327(a) and (b)	Sections 5.612(e) and 5.609(b)(9)	As used in the Act and final rule, how are the terms “dependent child” and “dependent children” defined?	“Dependent child” and “dependent children,” as used in the Act and final rule, have the same meaning as provided at 24 CFR 5.603: Dependent: A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or a person with a disability, or is a full-time student. To be sure, the child or children must reside in the student family household.
<b>25</b>	Section 327(b)	Section 5.609(b)(9)	Does financial assistance include federal, State, and local grants, scholarships, and loans?  Section 327(b) states: “any financial assistance (in excess of amounts received for tuition) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children.”	Student financial assistance, as used in the Act and final rule, means any assistance (in excess of amounts received for tuition) that an individual receives:  <ol style="list-style-type: none"> <li>(1) Under the Higher Education Act of 1965</li> <li>(2) From private sources</li> <li>(3) From an institute of higher education</li> </ol> <p>Such financial assistance may include federal, State, and local grants and scholarships (athletic and academic), fellowships and student educational financial assistance from parents, guardians, or other persons residing outside of the student family household. HUD has interpreted the term “financial assistance,” as used in Section 327(b) to not include loan proceeds for the purpose of determining income.</p>

	<b>Section 327 of the FY 2006 Appropriations Act</b>	<b>Final Rule, FR-5036-F-01</b>	<b>Question</b>	<b>Answer</b>
<b>26</b>	Section 327(b)	Section 5.609(b)(9)	In the new law, how is student to be defined?	Student means all students enrolled either full-time or part-time at an institution of higher education. The new law does not exempt part-time students.
<b>27</b>	Section 327(b)	Section 5.609(b)(9)	What is included in tuition and fees? Does it include other fees charged by the educational institution?	Tuition and fees shall have the meaning given this term by the institution of higher education in which the student is enrolled. Yes, it does include fees.

## Chapter 4

### APPLICATIONS, WAITING LIST AND TENANT SELECTION

#### INTRODUCTION

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

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

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance, and that the YHA affirmatively further fair housing goals in the administration of the program [24 CFR 982.53, HCV GB p. 4-1]. Adherence to the selection policies described in this chapter ensures that the YHA will be in compliance with all relevant fair housing requirements, as described throughout the Administrative Plan.

This chapter describes HUD and YHA policies for taking applications, managing the waiting list and selecting families for HCV assistance. The policies outlined in this chapter are organized into three sections, as follows:

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

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

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

## **PART I: THE APPLICATION PROCESS**

### **4-I.A. OVERVIEW**

This part describes the policies that guide the YHA's efforts to distribute and accept applications, and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list. This part also describes the YHA's obligation to ensure the accessibility of the application process to elderly persons, people with disabilities, and people with limited English proficiency (LEP).

### **4-I.B. APPLYING FOR ASSISTANCE [HCV GB, pp. 4-11 – 4-16]**

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits the YHA to determine the format and content of HCV applications, as well how such applications will be made available to interested families and how applications will be accepted by the YHA.

#### YHA Policy

Depending upon the length of time that applicants may need to wait to receive assistance, YHA may use a one-, two- or three-step application process.

A one-step process will be used when it is expected that a family will be selected from the waiting list within 60 days of the date of application. At application, the family must provide all of the information necessary to establish family eligibility and level of assistance.

A two-step process will be used when it is expected that a family will not be selected from the waiting list for at least 60 days from the date of application. Under the two-step application process, YHA initially will require families to provide only the information needed to make an initial assessment of the family's eligibility, and to determine the family's placement on the waiting list.

The three-step process will provide for verification prior to admission, but after the full application is received.

The family will be required to provide all of the information necessary to establish family eligibility and level of assistance when the family is admitted from the waiting list.

Families may obtain application forms from YHA's office during normal business hours and at various locations throughout the YHA service area. Families may also request, by telephone or by mail, that a form be sent to the family via first class mail.

Completed applications must be returned to YHA by mail, by fax, or submitted in person during normal business hours. Applications must be complete in order to be accepted by the PHA for processing. If an application is incomplete, YHA will notify the family of the additional information required.

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Persons with disabilities who require a reasonable accommodation in completing an application may call YHA to make special arrangements to complete their application. A Telecommunication Device for the Deaf (TDD) is available. The TDD telephone number is 1-800-545-1833, ext. 560.

Families wishing to apply for the Section 8 Program will be required to complete an application. The application process may involve three phases.

**A. Phase I: The Pre-application**

The first phase is the initial application for housing assistance or the "pre-application." This first phase results in the family's placement on the waiting list. Pre-applications will be accepted in a manner as described in the public notice advertising the opening of the Section 8 waiting list.

When the wait list is opened, pre-applications may be obtained and submitted to the YHA.

The completed pre-application will be dated and time stamped upon receipt by the YHA and will result in the family's placement on the waiting list. Failure to complete the pre-application with required criminal background checks will not be accepted.

Persons with disabilities who require a reasonable accommodation in completing an application may call the YHA to make special arrangements.

The pre-application will contain the information necessary to determine the family's unit size and position on the waiting list in accordance with any applicable preferences. It will also contain racial/ethnic data, information regarding the need for accessible units, and needs of persons with disabilities and any other Housing Department required information from each applicant head of household.

**B. Phase II: The Full Application**

The second phase of the process is a full application, which will be taken at the time the family reaches the top of the waiting list and will be a much more detailed application. The full application includes the following information:

1. Family members expected to occupy the unit;
2. Anticipated sources and amounts of income;
3. Allowable expense information;

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4. Information regarding any special housing needs, such as the need for barrier-free housing for persons with disabilities;
  5. Current mailing/phone contact information;
  6. Family data required for completion of the HUD Form 50058; and,
  7. Current and prior family history necessary to determine the likelihood of compliance with obligations of the lease.

While the application will make inquiries necessary to determine a family's need, if any, for units retrofitted to meet the needs of mobility-, hearing-, or visually-impaired persons, such inquiries will be made in a manner that clearly reflects the YHA's interest in meeting such special needs and not for discriminatory purposes.

The applicant must report changes in their applicant status including changes in family composition, income, or preference factors. The YHA will annotate the applicant's file and will update their place on the waiting list. The changes will be confirmed with the family in writing.

Applicants will receive written notification to call and set an appointment to complete the full application prior to the briefing date. Applicants will be must bring in all verifications of income and other applicable documentation. At this appointment he/she will be notified of the briefing date.

**C. Phase III - Eligibility**

All applicants who successfully complete the initial screening and interview/verification process will be determined eligible for the program they selected and were processed for. Eligible files will be transferred to the program area for housing consideration, and the applicant will be notified by mail to call for an appointment.

As a reasonable accommodation, families may also request – by telephone or by mail – a form be sent to the family via first class mail.

Applications must be complete in order to be accepted by the YHA for processing. If an application is incomplete, the YHA will notify the family of the additional information required

**4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS**

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

The YHA will take a variety of steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard YHA application process. This could include people with disabilities, certain elderly individuals, as well as persons with

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

### **Limited English Proficiency**

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

### **4-I.D. PLACEMENT ON THE WAITING LIST**

The YHA will review each pre-application received and make a preliminary assessment of the family's eligibility. The YHA will accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance) for the grounds stated in the regulations [24 CFR 982.206(b)(2)]. Where the family is determined to be ineligible, the YHA will notify the family in writing [24 CFR 982.201(f)]. Where the family is not determined to be ineligible, the family will be placed on a waiting list of applicants.

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

### **Ineligible for Placement on the Waiting List**

#### YHA Policy

If the YHA can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list. Where a family is determined to be ineligible, the YHA will send written notification of the ineligibility determination within 10 business days of receiving a complete application. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review and explain the process for doing so (see Chapter 16).

### **Eligible for Placement on the Waiting List**

#### YHA Policy

The YHA will send written notification of the preliminary eligibility determination within 10 business days of receiving a complete application.

Placement on the waiting list does not indicate that the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list and before issuance of the voucher.

Applicants will be placed on the waiting list according to any preference(s) for which they qualify, and the date and time their complete application is received by the YHA.

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**PART II: MANAGING THE WAITING LIST**

**4-II.A. OVERVIEW**

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

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

In the case of disputes on eligibility/ineligibility criteria that are pending the outcome of legal proceedings (i.e., currently under appeal in a court of law), the YHA will determine the family to be ineligible at that time. If the legal decision is rendered that the person did meet the eligible factors, the YHA shall restore the application to the original date and time, and reinstate the applicant to any other preference factors that the YHA has adopted. If the legal decision is rendered that the person did not meet the eligibility factors, the YHA shall only provide the applicant with access to the grievance process in accordance with applicable requirements.

**4-II.B. ORGANIZATION OF THE WAITING LIST [24 CFR 982.204 and 205]**

The YHA's HCV waiting list is organized in such a manner to allow the YHA to accurately identify and select families for assistance in the proper order, according to the admissions policies described in this plan.

The waiting list contains the following information for each applicant listed:

- Applicant name;
- Family unit size;
- Date and time of application;
- Qualification for any local preference;

HUD requires the YHA to maintain a single waiting list for the HCV program unless it serves more than one county or municipality. As such YHA is permitted, but not required, to maintain a separate waiting list for each county or municipality served.

YHA Policy

The YHA will maintain a single waiting list for the HCV program. However, the YHA will maintain a Project-based waiting list separate for the HCV Tenant-based Waiting List. The Project-based Waiting list will include any additional site specific requirements.

HUD directs that a family that applies for assistance from the HCV program must be offered the opportunity to be placed on the waiting list for any public housing, project-based voucher or moderate rehabilitation program the YHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs.

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A family's decision to apply for, receive, or refuse other housing assistance must not affect the family's placement on the HCV waiting list, or any preferences for which the family may qualify.

YHA Policy

The YHA will not merge the HCV waiting list with the waiting list for any other program the YHA operates.

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

**Closing the Waiting List**

YHA is permitted to close the waiting list if it has an adequate pool of families to use its available HCV assistance. Alternatively, the YHA may elect to continue to accept applications only from certain categories of families that meet particular preferences or funding criteria. YHA has determined that 24 months of a waiting list is an adequate pool of families.

YHA Policy

The closing date of the Waiting List may be announced at the same time as the opening is announced. Where the YHA has particular preferences or funding criteria that require a specific category of family, the YHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

**Reopening the Waiting List**

If the waiting list has been closed, it cannot be reopened until the YHA publishes a notice in local newspapers of general circulation, minority media, and other suitable media outlets. The notice must comply with HUD fair housing requirements and must specify who may apply, and where and when applications will be received.

YHA Policy

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

The YHA will give public notice by publishing the relevant information in suitable media outlets including, but not limited to:

- Minority papers of general circulation
- Additional contact with Social Service Agency providers and those addressing additional needs

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

There are many approaches to informing the public about an upcoming application period. The goal of the outreach must be to make the information available to every eligible family. Basic outreach objectives for the YHA include:

- Stimulate and sustain interest in the program; and

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- Provide helpful information to potential participants
  - Ensure the waiting list has sufficient number of applicant families

**Fair Housing Requirements [HCV GB, pp. 4-2]**

All outreach, advertising and public notices announcing the opening or closing of a waiting list must include efforts to ensure that the information will reach those populations that are considered to be “least likely to apply” for assistance under the housing choice voucher program. Outreach must also include efforts to reach persons with disabilities. All advertising and outreach literature must include the equal housing opportunity logo and non-discrimination in the advertising message.

YHA Policy

All YHA outreach efforts will comply with the Fair Housing guidelines

**Extremely Low Income (ELI)**

At least 75 percent of the families who are admitted to a PHA’s housing choice voucher program during the PHA fiscal year must be extremely low-income. Extremely low-income families are those with incomes at or below 30 percent of the area median income, or the poverty level or as defined by HUD. Income limits are posted on the internet through HUDUSER. The annual gross income of the applicant family is used for income-targeting purposes. Annual income must have been verified within the 60 days prior to issuance of the voucher. The YHA must meet its income targeting requirement over the course of the YHA’s fiscal year. In other words, deviations from the 75 percent extremely low-income target are allowed during the year as long as the target is met by the year’s end.

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

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

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

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

YHA Policy

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

**4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES**

YHA Policy

While the family is on the waiting list, the family must inform the YHA of changes in contact information, including current residence, mailing address, and phone number, within 10 days of the change. The family must additionally report any changes that might occur in their preference eligibility. The changes must be submitted in writing.

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

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

**Purging the Waiting List**

The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to a YHA request for information or updates because of the family member's disability, the YHA must reinstate the applicant family to their former position on the waiting list after receipt of verification. [24 CFR 982.204(c)(2)].

YHA Policy

The waiting list will be updated annually to ensure that all applicants and applicant information is current and timely.

To update the waiting list, the YHA will send an update request via first class mail to each family on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program. This update request will be sent to the last address that the YHA has on record for the family. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

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

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

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

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If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 30 business days to respond from the date the letter was re-sent.

If a family is removed from the waiting list for failure to respond, the Executive Director may reinstate the family if s/he determines the lack of response was due to YHA error, or to circumstances beyond the family's control.

### **Removal from the Waiting List**

#### YHA Policy

If at any time an applicant family is on the waiting list, the YHA determines that the family is not eligible for assistance (see Chapter 3), the family will be removed from the waiting list.

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

## **PART III: SELECTION FOR HCV ASSISTANCE**

### **4-III.A. OVERVIEW**

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

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

The YHA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to the YHA's selection policies [24 CFR 982.204(b) and 982.207(e)].

### **4-III.B. SELECTION AND HCV FUNDING SOURCES**

#### **Special Admissions [24 CFR 982.203]**

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

The following are examples of types of program funding that may be targeted for a family living in a specified unit:

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- A family displaced because of demolition or disposition of a public housing project;
  - A family residing in a multifamily rental housing project when HUD sells, forecloses or demolishes the project;
  - A family residing in a project covered by a project-based Section 8 HAP contract at or near the end of the HAP contract term;
  - Mainstream Vouchers
  - Family Unification Program (FUP)
  - Veterans Assistance of Supportive Housing (VASH)
  - Project-based Assistance
  - A non-purchasing family residing in a HOPE 1 or HOPE 2 project. and
  - For housing covered by the Low Income Housing Preservation and Resident Homeownership Act of 1990 (41 U.S.C. 4101 et seq.):
    - A non-purchasing family residing in a project subject to a homeownership program (under 24 CFR 248.173); or
    - A family displaced because of mortgage prepayment or voluntary termination of a mortgage insurance contract (as provided in 24 CFR 248.165);

**Targeted Funding [24 CFR 982.204(e)]**

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

YHA Policy

The YHA does currently administer the following types of targeted funding:

**Family Unification Program**

**Mainstream Vouchers for Persons with a Disability**

**VASH**

**RAD Project-based Voucher**

**Regular HCV Funding**

Regular HCV funding may be used to assist any eligible family on the waiting list. Families are selected from the waiting list according to the policies provided in Section 4-III.C.

**OTHER ADMISSIONS to YHA/SUPPORTIVE SERVICES VOUCHERS**

**YHA does not set aside supportive service vouchers:**

**Supportive Service Referral Process:**

Contingent upon funding availability, YHA may make up to 10% of the YHA's vouchers available for tenant-based assistance through referrals from outside agencies that provide supportive services for the disabled, and working families. In addition, referrals can be entered

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into with other outside agencies to assist with housing services of the community. They will be identified as “Special Programs”.

When a family is referred to YHA through “Special Programs” they will receive a voucher if they meet all of the eligibility requirements enumerated in this plan, and a voucher is available for the program. Only families residing in non-subsidized housing may be referred, unless the family has successfully completed housing counseling training, through a program recognized by YHA.

Vouchers will be made available to families who are referred, regardless of whether the family is on the regular voucher waiting list, regardless of the family’s current waiting list position, and regardless of whether the waiting list is closed. When a family is referred to YHA through the “Special Programs”, YHA will search its regular voucher waiting list to determine whether the referred family is on that list. If the referred family’s name is on the regular YHA waiting list, their name will be removed when they receive a voucher through the “Special Programs”, and the family will be counted toward the 10% “Special Programs” vouchers.

“Special Programs” are responsible for referring families to YHA in the order deemed acceptable by the participating agencies, as specified in the MOU. The MOU will also specify the other responsibilities of the participating agencies.

**Moderate Rehabilitation Admissions:**

A family may be admitted to the voucher program if they are a family in the Moderate Rehabilitation Program and it has been determined by YHA that the family must relocate because the family is under-housed or the family has a disabled member and there are not available Moderate Rehabilitation units of the appropriate size or type.

The family will not be required to complete an application and be placed on the waiting list. A voucher will be issued to the family immediately upon verifying the family’s need for more suitable housing.

**4-III.C. SELECTION METHOD**

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

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

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

YHA Policy

YHA will select families based on the following preferences for Section 8 Vouchers:

- A. Involuntary Displacement  
Applicants who have vacated housing as a result of:

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- a. Victims of domestic violence who:
    - i. Have vacated due to actual or threatened physical violence directed against the applicant or the applicant’s family by a spouse or other household member, or
    - ii. Live in housing with an individual who engages in such violence. Such “actual” or “threatened” violence must have occurred recently or be of a continuing nature. An applicant who lives in a violent neighborhood or is fearful of other violence outside the household is not considered involuntarily displaced.

**B. Local Preference**

For the purpose of priority for admission, the YHA will provide for a local preference for persons who reside in the jurisdictional area that the YHA operates the program, over families that do not reside, work or notified that they will be working in the jurisdictional area of YHA. The area of jurisdiction is Yakima and Kittitas Counties, Washington. Eligibility for Local Preference may be demonstrated by having a physical residence within the jurisdictional area. Physical residence shall be defined as a domicile with a mailing address, other than a post office box, for which the applicant can produce one or more of the following: a lease or a purchase agreement, utility bills showing the claimed residence address, or two pieces of first class mail addressed to a member of the applicant household at the claimed address. It can also be demonstrated through employment or notification that they will be employed. There is no duration on the amount of time that they must be employed or residing in the area to meet this preference. **(24 CFR 982.207)**

**C. The YHA will select families based on the additional following preferences:**

Date and time of application will be used to determine the sequence of tenant selection

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

At least 75% of the families who are admitted to YHA’s housing choice voucher program during the PHA fiscal year must be extremely low-income. Extremely low-income families are those with incomes at or below 30 percent of the area median income or the poverty level as determined by HUD. The YHA may skip non-ELI families for a ELI family to satisfy this requirement.

**Eligibility Requirement**

To be income eligible the families must fall under the following categories:

- Considered a “Very-low Income” Family
- A low-income family that meets additional eligibility criteria specified in the YHA administrative plan. Such additional YHA criteria must be consistent with the YHA plan and with the consolidated plans for local governments in the YHA jurisdiction;
- Low-income family that is “continuously assisted” under the 1937 Housing Act;

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- Low-income or moderate-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing as defined in (§248.101);
  - Low-income family that qualifies for voucher assistance as a non-purchasing family residing in a project subject to a resident homeownership program under §248.173 of this title; or
  - Low-income family that is eligible under the student rule provisions.
  - Low-income on the project-based Voucher Program after conversion of PH to the PBV/RAD

#### YHA Policy

The YHA will monitor applicants throughout the year to meet the HUD ELI requirements. If it is found that the YHA needs to assist more ELI families, these families will be select over a non-ELI family on the waiting list. If the waiting list does not have enough ELI families, the YHA will conduct a marketing outreach to meet HUD requirements.

#### **Order of Selection [HCV GB 4-12]**

As vouchers are expected to become available, the YHA selects eligible applicants from the waiting list in order to begin the eligibility determination, voucher issuance, and leasing processes. Except for special admissions, participants must be selected from the housing choice voucher program waiting list. The YHA must select participants from the waiting list in accordance with HUD regulations and requirements and in compliance with admission policies in the YHA's administrative plan.

The YHA's admission policy must describe the YHA's system of preferences that is used to select applicants from the waiting list, including any residency or other local preference. The YHA must organize its waiting list and maintain the information necessary to select according to its policies.

If the YHA does not have sufficient funds to subsidize the family unit size of the family at the top of the waiting list, the YHA may not skip the top family to admit an applicant with a smaller family unit size. Instead, the family at the top of the waiting list will be admitted when sufficient funds are available. When HUD awards the YHA program funding for a specified category of families on the waiting list, the YHA must select applicant families in the specified category [24 CFR 982.204(d) and (e)].

#### YHA Policy

Families will be selected on a first-come, first-served basis according to the priority and date and time their complete application is received by the YHA. Documentation will be maintained by the YHA as to whether families on the list qualify for and are interested in targeted funding, should targeting funding exist.

#### **4-III.D. NOTIFICATION OF SELECTION**

When a family has been selected from the waiting list, the YHA will notify the family.

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YHA Policy

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

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

Who is required to attend the interview;

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

Other documents and information that should be brought to the interview.

Notification letters returned to the YHA with no forwarding address will result in the family's removal from the waiting list. A notice of denial (see Chapter 3) will be sent to the family's address of record, as well as to any known alternate address or contact

**4-III.E. THE APPLICATION INTERVIEW**

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

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

YHA Policy

Families selected from the waiting list are required to participate in an eligibility interview. Families are pulled in "batches". (i.e. for each voucher available 5 families will be pulled for an appointment.)

All adult family members are required to attend the interview and sign the housing application. Exceptions may be made for students attending school out of state/for members for whom attendance would be a hardship. It is the applicant's responsibility to reschedule the interview if s/he misses the appointment. If the applicant does not reschedule or misses two scheduled meetings, the YHA will cancel the application and withdraw their name from the Wait List. Applicants who fail to appear and call to reschedule a missed appointment must make the request to reschedule no later than 10 days from the original appointment date. The request must be made to the staff person who scheduled the appointment. If an applicant fails to appear for a pre-scheduled appointment, the YHA will automatically schedule a second appointment.

If the applicant misses the second appointment without prior approval, the application is cancelled and withdrawn. Reasonable accommodation will be made for persons with a disability who require an advocate or accessible offices. A designee will be allowed to participate in the interview process, but only with permission of the person with a disability. If an application is denied due to failure to attend the full application interview,

the applicant will be notified in writing and offered an opportunity to request an administrative review. (See "Complaints and Appeals "chapter.)

The family must provide the information necessary to establish the family's eligibility and determine the appropriate level of assistance, as well as completing required forms, providing required signatures, and submitting required documentation. If any materials are missing, the YHA will provide the family with a written list of items that must be submitted.

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

An advocate, interpreter, or other assistant may assist the family with the application and the interview process.

Interviews will be conducted in English. For limited English proficient (LEP) applicants, the YHA will provide translation services in accordance with the YHA policy.

In all circumstances, if a family does not attend a scheduled interview, the YHA will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without YHA approval, or if the second notification letter is returned to the YHA with no forwarding address, the family will be removed from the waiting list without any further notification, with not right to an informal review.

#### **4-III.F. COMPLETING THE APPLICATION PROCESS**

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

##### YHA Policy

If the YHA determines the family is ineligible, the YHA will send written notification of the ineligibility determination within 20 business days of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review (Chapter 16).

If a family fails to qualify for any criteria that affected the order in which it was selected from the waiting list (e.g. targeted funding, extremely low-income), the family will be returned to its original position on the waiting list. The YHA will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.

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

## **Chapter 5**

### **BRIEFINGS AND VOUCHER ISSUANCE**

#### **INTRODUCTION**

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

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

Part I: Briefings and Family Obligations. This part details the program's requirements for briefing families orally, and for providing written materials describing the program and its requirements. It includes a particular focus on the family's obligations under the program.

Part II: Subsidy Standards and Voucher Issuance. This part discusses the YHA's standards for determining how many bedrooms a family of a given composition qualifies for, which in turn affects the amount of subsidy the family can receive. It also discusses the policies that dictate how vouchers are issued, and how long families have to locate a unit.

#### **PART I: BRIEFINGS AND FAMILY OBLIGATIONS**

##### **5-I.A. OVERVIEW**

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

##### **5-I.B. BRIEFING [24 CFR 982.301]**

The YHA must give the family an oral briefing and provide the family with a briefing packet containing written information about the program. Families may be briefed individually or in groups. At the briefing, the YHA must ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973), and ensure that the

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briefing site is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

YHA Policy

Briefings will be conducted in a group meeting.

Briefings may be one-on-one for special needs, LEP, or other factors as determined by YHA.

The head of household and other adults are required to attend the briefing.

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

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

**Notification and Attendance**

YHA Policy

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

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

Applicants who fail to attend a scheduled briefing will automatically be scheduled for another briefing. The YHA will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without YHA approval, or if the second notice is returned to the YHA with no forwarding address, the family will be removed from the program and sent a notice of cancellation.

Families must reapply if and when the waiting list is reopened.

**Oral Briefing [24 CFR 982.301(a)]**

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works;
- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside the YHA's jurisdiction;

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- For families eligible under portability, an explanation of portability and opportunity areas. It will also contain maps supporting opportunity areas. The YHA cannot discourage eligible families from moving under portability;
  - For all families, an explanation of the advantages of moving to areas outside of high-poverty concentrations; and
  - Information on VAWA
  - An explanation of form HUD-92006 “Supplement to Application for Federally Assisted Housing”
  - An explanation of form HUD-52675 “Debts Owed to Public Housing Agencies and Terminations”

#### YHA Policy

When YHA-owned units are available for lease, the YHA will inform the family during the oral briefing that the family has the right to select any eligible unit available for lease, and is not obligated to choose a YHA-owned unit.

#### **Briefing Packet [24 CFR 982.301(b)]**

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

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

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- The HUD pamphlet on lead-based paint entitled *Protect Your Family from Lead in Your Home*.
  - Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form.
  - A list of landlords or other parties willing to lease to assisted families or help families find units, especially outside areas of poverty or minority concentration.
  - Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to the YHA.
  - The family obligations under the program, including any obligations of a welfare-to-work family.
  - The grounds on which the YHA may terminate assistance for a participant family because of family action or failure to act.
  - YHA informal hearing procedures including when the YHA is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.
  - The YHA owner information brochure. This brochure can be given by the applicant to a prospective owner to help explain the program.

The YHA is located in a metropolitan FMR area, and the following additional information may be included in the briefing packet in order to receive full points under SEMAP Indicator 7, Expanding Housing Opportunities [24 CFR 985.3(g)].

- Maps showing areas with housing opportunities outside areas of poverty or minority concentration, both within its jurisdiction and its neighboring jurisdiction.
- Information about the characteristics of these areas including job opportunities, schools, transportation and other services.
- An explanation of how portability works, including a list of portability contact persons for neighboring PHAs including names, addresses, and telephone numbers.

### **Additional Items to be Included in the Briefing Packet**

In addition to items required by the regulations, YHA may wish to include supplemental materials to help explain the program to both participants and owners [HCV GB p. 8-7].

#### YHA Policy

The YHA will provide the following additional materials in the briefing packet:

Information on how to fill out and file a housing discrimination complaint form.

Information about the protections afforded by the Violence against Women Act of 2013 (VAWA) to victims of domestic violence, dating violence, sexual assault, and stalking (see section 16-IX.C)

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Information about the protections afforded by the Protecting Tenants at Foreclosure Act (PTFA) (see section 13-II.G)

“Is Fraud Worth It?” (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse

“What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19

Prior to issuing a Voucher, at the Orientation session, the YHA shall give the applicant family a Section 8 Voucher Holder’s Packet, which includes the following information and/or documents. (Ref. CFR 982.301)

- General Information
- Certifying Family Eligibility
- Criminal Background Check
- FRAUD
- Verifications
- Issuing a Voucher & Requesting an extension beyond the initial sixty days
- Family Obligations under the Voucher
- Subsidy Standards
- Requesting Lease Approval
- Finding a Dwelling Unit
- Questions to Ask the Prospective Landlord
- HUD Housing Quality Standards Inspection
- Deposits, Pets, and Utilities
- Utility Allowances
- Rent Calculation
- Portability
- Housing Discrimination
- Moving In
- Annual Activities & Requirements
- One Strike Policy

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- Informal Hearing/Review Procedures
  - Lead Based Paint Warning
  - Section 8 Visitors Policy
  - Booklet: “A Good Place To Live”

When an applicant family has been determined eligible, and all factors of eligibility, income, and family composition have been verified, and has attended an orientation session, a voucher of the appropriate subsidy size will be issued. Upon issuance of the voucher, the family will be given a request for lease approval packet, which includes:

- Request for Approval of Tenancy
- A copy of the Voucher
- To the Landlord
- Section 8 Landlord Certification
- IRS Form W-9
- Rent Reasonableness Comparable
- Section 8 tenancy addendum and HAP Contract (sample)
- Disclosure of Information on Lead-Based Paint and/or Lead Based Paint Hazards
- Inspection Checklist

### **5-I.C. FAMILY OBLIGATIONS**

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

#### **Time Frames for Reporting Changes Required By Family Obligations**

##### YHA Policy

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

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

#### **Family Obligations [24 CFR 982.551]**

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

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- 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.
  - All other obligations under the voucher program.

#### YHA Policy

Damages beyond normal wear and tear will be considered to be damages that could be assessed against the security deposit. If the court awards damages to the landlord, the tenant must make financial restitution to the landlord or the tenant will be terminated from the HCV Program.

If the family enters into a repayment agreement with the landlord and fails to make payments as agreed, the tenant will be terminated from the HCV Program.

- 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, police reports, and affidavits from the owner, neighbors, or other credible parties with direct knowledge.

*Serious and repeated lease violations* will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, living or housekeeping habits that cause damage to the unit or premises, and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking will not be construed as serious or repeated lease violations by the victim [24 CFR 5.2005(c)(1)].

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

#### YHA Policy

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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.
- 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 notify the YHA, within 10 days, 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 before the 30<sup>th</sup> calendar day.

- The family must pay utility bills and provide and maintain any appliances 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 a participant in the HCV Homeownership Program).

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- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
  - Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and 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 the immediate vicinity of 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]

## **PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE**

### **5-II.A. OVERVIEW**

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

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

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

The following requirements apply when the YHA determines family unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under the housing quality standards.

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- The subsidy standards must be applied consistently for all families of like size and composition.
  - A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
  - A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
  - Any live-in aide (approved by the YHA to reside in the unit to care for a family member who is disabled, or meets the qualifiers) must be counted in determining the family unit size; Upon YHA approval of a request for the addition of a live-in aide, YHA shall notify participants that they have been approved for a live-in aide and that they must submit the name, and any other required information of their selection for screening. The proposed live-in aide must sign consent forms in order for YHA to conduct the screening. The live-in aide must be approved/disapproved within 30 calendar days of the requested reasonable accommodation request notice. The voucher allocation increase will be processed for the approved reasonable accommodation. If the live-in aide is disapproved or the participant does not submit an approvable live-in aide, or the approvable live-in aide does not live in the dwelling unit, then the voucher size shall be decreased to the proper voucher size with a proper change notice of 30 additional days. Once approved, a new request for reasonable accommodation will not be required and the request will remain into effect unless circumstances should changes with the disabled individual needing the accommodation.
  - YHA will not issue a larger voucher due to additions to the household of family members other than by birth, adoption, marriage, or court-awarded custody. YHA will not increase the bedroom size for a participant when an adult (18 years old and older) is being added to the household, including if the adult to be added is a child of the head of household or co-head, unless it is as a reasonable accommodation to add an adult child that is disabled/meets the qualifier.
  - Unless a live-in aide resides with a family, the family unit size for any family consisting of a single person must be either a zero- or one-bedroom unit, as determined under the YHA subsidy standards.

#### YHA Policy

The YHA will assign one bedroom for each two persons within the household, except in the following circumstances:

In determining bedroom size, the YHA will include the presence of children to be born to a pregnant woman, children who are in the process of being adopted, children whose custody is being obtained, children who are temporarily away at school or temporarily in foster-care.

Bedroom size will also be determined using the following guidelines:

1. The HoH gets one room and two persons per bedroom thereafter regardless of sex or age.

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2. Foster-adults and children will not be required to share a bedroom with family members. Foster children/adults will be included in determining unit size only if they will be in the unit for more than 190 consecutive calendar days.
  3. Live-in aides will get a separate bedroom.
  4. Persons of different generations (such as grandparents). and unrelated adults should be allocated a separate bedroom.
  5. Space may be provided for a child who is away at school but who lives with the family during school recesses.
  6. Space will not be provided for a family member, other than a spouse, who will be absent most of the time, such as a member who is away in the military.
  7. Space may be provided for a child who is temporarily (less than 90 days) away from the home because of placement in foster care.
  8. Children who live in the unit less than fifty-one percent (51% of the time will not be counted in the household composition to determine unit size. Fifty-one (51%) will be define as 183 days per calendar year. If the divorce or custody decree states that custody of the children is 50/50 and there is no other documentation to support custody of 183 days or not pattern established, the bedroom will be issued and the dependent allowance will be given to the family who originally listed the child in their household.
    - a. Custodial parent may also determine by DSHS's determination of household composition for TANF or food benefits paid to the household.
  9. If the children are removed from the household, the parent(s) or guardian will retain their eligibility however they may be issued a different size voucher and their funding reduced at the next regular reexamination unless it can be shown that the children will be returned by the time of their next annual recertification date.

The YHA will grant exceptions to normal occupancy standards; when a family requests a larger size than the guidelines allow and documents a medical reason why the larger size is necessary. The Manager or Supervisor must document the rationale for any approved exceptions.

The family unit size will be determined by the YHA in accordance with the above guidelines and will determine the maximum rent subsidy for the family; however, the family may select a unit that may be larger or smaller than the family unit size. If the family selects a smaller unit, the payment standard for the smaller size will be used to calculate the subsidy. If the family selects a larger size, the payment standard for the family unit size will determine the maximum subsidy.

Participants will be allowed to use non-sleeping areas (excluding kitchens and bathrooms) as a bedroom subject to landlord approval; however, the Payment Standard shall be based on the size indicated on the Voucher or unit size selected whichever is

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smaller. In these exceptions, the YHA reserves the right to approve or disapprove such accommodations that may lead to unsafe or overcrowded conditions.

The YHA will reference the following chart in determining the appropriate voucher size for a family:

<b>Voucher Size</b>	<b>Persons in Household</b>	
	<b>(Minimum</b>	<b>– Maximum)</b>
0 Bedroom	1	1
1 Bedroom	1	2
2 Bedrooms	2	4
3 Bedrooms	3	6
4 Bedrooms	4	8
5 Bedrooms	5	10
6 Bedrooms	6	12

A participant may select a smaller size unit than the size listed on their Housing Choice Voucher, however, the payment standard for the smaller size unit shall be utilized.

If YHA errs in the bedroom size designation, the family will be issued a voucher of the appropriate size.

**Housing Quality Standards** The standards allow two persons per living/sleeping room and permit maximum occupancy levels (assuming a living room is used as a living/ sleeping area) as shown in the table below. The levels may be exceeded if a room in addition to bedrooms and living room is used for sleeping.

#### HQS GUIDELINES FOR UNIT SIZE SELECTED

<b>Unit Size</b>	<b>Maximum Number in Household</b>
0 Bedroom	1
1 Bedroom	4
2 Bedrooms	6
3 Bedrooms	8
4 Bedrooms	10

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5 Bedrooms	12
6 Bedrooms	14

**5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS AND REVISIONS [PIH 2014-25]**

In determining family unit size for a particular family, the YHA may grant an exception to its established subsidy standards if the YHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances [24 CFR 982.402(b)(8)]. Reasons may include, but are not limited to:

- A need for an additional bedroom for medical equipment
- A need for a separate bedroom for reasons related to a family member’s disability, medical or health condition

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

YHA Policy

The YHA will consider granting an exception for any of the reasons specified in the regulation: the age, sex, health, handicap, or relationship of family members.

The family must request any exception to the subsidy standards in writing. The request must explain the need or justification for a larger family unit size, and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source, unless the disability and the disability-related request for accommodation is readily apparent or otherwise known.

The family’s continued need for an additional bedroom due to special medical equipment must be re-verified at annual reexamination.

The YHA will notify the family of its determination within 10 business days of receiving the family’s request and upon receipt of any documentation requested to verify the request. If a participant family’s request is denied, the notice will inform the family of their right to request an informal hearing.

The Office of Inspector General (OIG) issued a report on over subsidization in the Housing Choice Voucher (HCV) program due to the issuance of vouchers with unit sizes greater than the number of family members in the household. Pursuant to the recommendation of the OIG, HUD issued clarifying guidance on the matter of categorization of live-in aides, other reasonable accommodation issues and corresponding data entry into the Public and Indian Housing Information Center (PIC).

In accordance with 24 CFR Section 982.316, the YHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by a family member with a disability. The YHA may disapprove a particular person as a live-in aide if s/he has: (1) committed fraud, bribery or any other corrupt or criminal act in

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connection with any federal housing program; (2) committed drug-related criminal activity or violent criminal activity; or (3) currently owes rent or other amounts to the YHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act or for other reasons as determined by the YHA. Consequently, YHA may not approve an unidentified live-in aide, nor a larger unit than the family qualifies for under the YHA's subsidy standards for an unidentified live-in aide. Occasional, intermittent, multiple or rotating care givers typically do not reside in the unit and would not qualify as live-in aides. Therefore, an additional bedroom should not be approved for a live-in aide under these circumstances.

A family may always request a reasonable accommodation to permit program participation by individuals with disabilities. A family's composition or circumstances may warrant the provision of an additional bedroom to permit disability-related overnight care and allow the family equal use and enjoyment of the unit. Such limited exceptions to the established subsidy standards are permitted under 24 CFR Section 982.402(b)(8). The YHA must consider requests for an exception to the established subsidy standards on a case-by-case basis and provide an exception, where necessary, as a reasonable accommodation. The YHA shall document the justification for all granted exceptions.

The YHA may only approve one additional bedroom for a live-in aide (PIH 2014-25). Although a live-in aide may have YHA-approved family member/s live with him/her in the assisted unit, no additional bedrooms will be provided for the family members of the live-in aide. The YHA must ensure that housing quality standards (HQS) will not be violated and that there will be no more than two people per bedroom or living/sleeping space in the unit in accordance with 24 CFR § 982.401(d)(2)(ii). If the approval of additional family members of a live-in aide would result in the violation of HQS, the additional family members of the live-in aide may not be approved.

Although YHA may approve an additional bedroom for medical equipment or other reasons if the need is documented by a health care provider, the actual equipment or need in the extra bedroom should be verified by the YHA during the annual inspection of the unit. If the extra bedroom is not being used for the intended purpose, the YHA must reduce the subsidy standard and corresponding payment standard at the family's next annual recertification. However, the YHA may take further action, if it believes any family obligations under 24 CFR Section 982.551 were violated.

The additional cause of over subsidization was the failure of the YHA to change the voucher unit size after changes in family composition. Although families are not required to move from an assisted unit when the number of bedrooms in the unit exceeds the number of bedrooms for which the family is eligible, the payment standard must conform to the YHA's subsidy standards at the family's next annual recertification after the change in family composition.

#### **5-II.D. VOUCHER ISSUANCE [24 CFR 982.302]**

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

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

A voucher can be issued to an applicant family only after the YHA has determined that the family is eligible for the program based on information received within the 60 days prior to issuance [24 CFR 982.201(e)] and after the family has attended an oral briefing [HCV 8-1].

#### YHA Policy

Vouchers will be issued to eligible applicants immediately following the mandatory briefing.

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

#### YHA Policy

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

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

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

#### **Voucher Term [24 CFR 982.303]**

The initial term of a voucher must be at least 60 calendar days. The initial term must be stated on the voucher [24 CFR 982.303(a)].

#### YHA Policy

The initial voucher term will be 60 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 60-day period unless the YHA grants an extension.

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

The YHA has the authority to grant extensions of search time, to specify the length of an extension, and to determine the circumstances under which extensions will be granted. There is no limit on the number of extensions that the YHA can approve. Discretionary policies related to extension and expiration of search time must be described in the YHA's administrative plan [24 CFR 982.54].

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YHA must approve additional search time if needed as a reasonable accommodation to make the program accessible to and usable by a person with disabilities. The extension period must be reasonable for the purpose.

The family must be notified in writing of the YHA's decision to approve or deny an extension. The YHA's decision to deny a request for an extension of the voucher term is not subject to informal review [24 CFR 982.554(c)(4)].

#### YHA Policy

The YHA will automatically approve one 30-day extension upon written request from the family.

The YHA will approve a 30-day extension for portability

The YHA may approve additional extensions only in the following circumstances:

It is necessary as a reasonable accommodation for a person with disabilities.

It is necessary due to reasons beyond the family's control, as determined by the YHA. Following is a list of extenuating circumstances that the YHA may consider in making its decision. The presence of these circumstances does not guarantee that an extension will be granted:

Serious illness or death in the family

Other family emergency

Obstacles due to employment

Whether the family has already submitted requests for tenancy approval that were not approved by the YHA

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

Any request for an additional extension must include the reason(s) an additional extension is necessary. The YHA may require the family to provide documentation to support the request.

All requests for extensions to the voucher term must be made in writing and submitted to the YHA prior to the expiration date of the voucher (or extended term of the voucher).

The YHA will decide whether to approve or deny an extension request within 10 business days of the date the request is received, and will immediately provide the family written notice of its decision.

The YHA may grant one or more extensions of the term, but the initial term plus any extensions will not exceed 120 calendar days from the initial date of issuance without an extraordinary reason.

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

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YHA must adopt a policy to suspend the housing choice voucher term if the family has submitted a Request for Tenancy Approval (RFTA) during the voucher term. “Suspension” means stopping the clock on a family’s voucher term from the time a family submits the RFTA until the time the YHA approves or denies the request [24 CFR 982.4]. The YHA’s determination not to suspend a voucher term is not subject to informal review [24 CFR 982.554(c)(4)].

YHA Policy

YHA will suspend the voucher from the time a family submits a RFTA.

When a Request for Tenancy Approval and proposed lease is received by the YHA, the term of the voucher will be suspended (additional days added to the voucher) while the YHA processes the request. If the unit does not pass inspection before the expiration of the families voucher the YHA will continue to process the Request for Tenancy Approval. Notice will be sent to the family informing them of the date by which the unit must pass inspection. If the unit does not pass by the date given, the voucher will expire after tolling has occurred.

**Expiration of Voucher Term**

Once a family’s housing choice voucher term (including any extensions) expires, the family is no longer eligible to search for housing under the program. If the family still wishes to receive assistance, the YHA may require that the family reapply, or may place the family on the waiting list with a new application date but without requiring reapplication. Such a family does not become ineligible for the program on the grounds that it was unable to locate a unit before the voucher expired [HCV GB p. 8-13].

YHA Policy

If an applicant family’s voucher term or extension expires before the family has submitted a Request for Tenancy Approval (RFTA), the YHA will require the family to reapply for assistance. If an RFTA that was submitted prior to the expiration date of the voucher is subsequently disapproved by the YHA (after the voucher term has expired), the family will be required to reapply for assistance.

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

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**Chapter 6**

**INCOME AND SUBSIDY DETERMINATIONS**

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

**INTRODUCTION**

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

- **Part I: Annual Income.** HUD regulations specify the sources of income to include and exclude to arrive at a family's annual income. These requirements and YHA policies for calculating annual income are found in Part I.
- **Part II: Adjusted Income.** Once annual income has been established HUD regulations require the YHA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and YHA policies for calculating adjusted income are found in Part II.
- **Part III: Calculating Family Share and YHA Subsidy.** This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining YHA subsidy and required family payment.

**PART I: ANNUAL INCOME**

**6-I.A. OVERVIEW**

The general regulatory definition of *Annual Income* shown below is from 24 CFR 5.609.

5.609 Annual income.

(a) Annual income means all amounts, monetary or non-monetary, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph [5.609(c)].

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

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

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

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

**6-I.B. HOUSEHOLD COMPOSITIONS AND INCOME**

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

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

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### Temporarily Absent Family Members

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

#### YHA Policy

Absence means that no member of the family is residing in the unit. The family may be absent from the unit for up to 10 **consecutive** days. The family must request permission **in writing** from the YHA for absences exceeding 30 days. The Housing Authority will make a determination within 5 business days of the request. An authorized absence may not exceed 180 **consecutive calendar days in any circumstance, or for any reason**. Any family absent for more than 30 days without authorization will be terminated from the program.

Generally, an individual who is or is expected to be absent from the assisted unit for 2 consecutive months or 30 days or less in a 12-month period of time is considered temporarily absent and continues to be considered a family member. Generally, an individual who is or is expected to be absent from the assisted unit for more than 60 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

#### *Absent Students*

##### YHA Policy

A student (other than husband or wife) who attends school away from home but who lives with the family during school recesses may be considered temporarily absent.

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the YHA indicating that the student has established a separate household or the family declares that the student has established a separate household.

#### *Absences Due to Placement in Foster Care*

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

##### YHA Policy

If a child has been placed in foster care, the YHA will verify with the appropriate agency whether and when the child is expected to return to the home, as previously discussed in this plan. Unless the agency confirms the child is in foster care, they will be counted as a family member.

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***Absent Head, Spouse, or Co-head***

YHA Policy

A head, spouse, or co-head absent from the unit more than 30 consecutive days will not continue to be considered a family member.

**Family Members Permanently Confined for Medical Reasons**

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

YHA Policy

The YHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. A person that is temporarily absent will have their income included. The family may present evidence the family member is confined on a permanent basis and request the person not be considered a family member. If the verification indicates the family member will return in less than 60 consecutive days (and up to 180 days after approval of the Section 8 Manager or authorized designee) the family member will not be considered permanently absent.

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

**Joint Custody of Dependents**

YHA Policy

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they reside with the applicant or participant family 183 days or more.

When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the YHA will make the determination based on available documents such as court orders, an IRS return showing which family has claimed the child for income tax purposes and/or school records.

**Guardians for a Child**

YHA Policy

If neither a parent nor a designated guardian remains in a household receiving HCV assistance, the YHA will take the following actions.

- (1) If a responsible agency has determined that another adult is to be brought into the assisted unit to care for a child for an indefinite period, the designated guardian will

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not be considered a family member until a determination of custody or legal guardianship is made.

- (2) If a guardian has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the guardian will be treated as a visitor for 90 days. After the 90 days has elapsed, the guardian will be considered a family member unless information is provided that would confirm that the guardian's role is temporary. In such cases the YHA will extend the guardian's status as an eligible visitor.
- (3) At any time that custody or guardianship legally has been awarded to a guardian, the housing choice voucher will be transferred to the guardian, upon completion of screening process.
- (4) During any period that a guardian is considered a visitor, the income of the guardian is not counted in annual income and the guardian does not qualify the family for any deductions from income.
- (5) Kin-care or guardian care income is specifically excluded income.

### **Unauthorized Residents**

Only family members listed on the HUD 50058 are permitted to reside in the assisted unit. Adults who reside in the assisted unit more than fourteen (14) consecutive days or for a minimum period of thirty (30) consecutive days during a 12-month period are not listed on the HUD-50058 form, will be deemed unauthorized residents, unless the YHA has provided prior approval and is in the process of evaluating said resident for eligibility.

A family will be permitted to demonstrate that the person is not an unauthorized resident by submitting at least one (1) of the following:

1. A written notarized statement from the landlord or neighbors of the participant;
2. A legible copy of the person's current state-issued photo identification or current vehicle registration;
3. A lease in the person's name at another address shall be the preferred choice of evidence.
4. Mail sent to the assisted unit may be considered as unauthorized occupancy.

The burden of proof that the individual is a visitor rests on the assisted family. In the absence of such proof, the individual will be considered an unauthorized member of the household and the YHA will terminate assistance since prior approval was not requested for the addition.

### **Minors and College Students**

Minors and college students who were part of the family but who now live away from home during the school year and are no longer on the lease may visit for up to 90 days per year.

## **6-I.C. ANTICIPATING ANNUAL INCOME**

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

### **Minimum Income**

There is no minimum income requirement. Families who report zero/extremely low income are required to complete a written certification every 30 days.

- Families that report zero/extremely low income will be required to provide information regarding their means of basic subsistence, such as food, utilities, transportation, etc.
- If the family’s expenses exceed their known income, the HA will make inquiry of the head of household as to the nature of the family’s accessible resources.

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

While there is no minimum income, families must demonstrate and continue to demonstrate the capacity to fulfill the requirements in the program.

### **Basis of Annual Income Projection**

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

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

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

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

#### YHA Policy

When EIV is obtained and the family does not dispute the EIV employer data, the YHA will use current tenant-provided documents to project annual income. When the tenant-provided documents are pay stubs, the YHA will make every effort to obtain current and consecutive pay stubs dated within the last 60 days.

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

If EIV or other UIV data is not available,

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If the family disputes the accuracy of the EIV employer data, and/or  
If the YHA determines additional information is needed.

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

When the YHA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the YHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income.

Any time current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the YHA to show why the historic pattern does not represent the family's anticipated income.

#### YHA Policy

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

#### ***Known Changes in Income***

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

<p><b>Example:</b> An employer reports that a full-time employee who has been receiving \$8/hour will begin to receive \$8.25/hour in the eighth week after the effective date of the reexamination. In such a case the YHA would calculate annual income as follows: <math>(\\$8/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\\$8.25 \times 40 \text{ hours} \times 45 \text{ weeks})</math>.</p>
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The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the YHA will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if the YHA's policy in Chapter 11 does not require interim reexaminations for other types of changes.

#### **Treatment of Seasonal Changes, School Employees with 9-Months Employment, or Summer Employment**

#### **YHA's Policy:**

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**YHA shall use only the method below to calculate income for the above factors:**

**CALCULATING ANTICIPATED ANNUAL INCOME (Example)**

A teacher's assistant works nine months annually and receives \$1,300 per month. During the summer recess, the teacher's assistant works for the Parks and Recreation Department for \$600 per month. The PHA may calculate the family's income using the following method:

- *Calculate Annual Income Based on Current Income:*

\$15,600 (\$1,300 x 12 months).

An interim reexamination would then be conducted at the end of the school year to recalculate the family's income during the summer months at reduced annualized amount of \$7,200 (\$600 x 12 months). Once the person returns to teaching, the income will increase again to \$15,600.

**Using Enterprise Income Verification (EIV) to Project Income**

HUD requires the YHA to use the enterprise income verification (EIV) system. EIV is “the verification of income, before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals” [VG, p. 7].

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

YHA Policy

YHA will use the streamline income verification system, whenever possible.

YHA procedures for anticipating annual income will include the use of EIV methods approved by HUD in conjunction with family-provided documents dated within the last 60 days of the YHA interview date.

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

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

If there is a discrepancy, YHA will always use the more accurate information in making its final determination.

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

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

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

The YHA will analyze all EIV, third-party, and family-provided data and attempt to resolve the income discrepancy.

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

## **6-I.D. EARNED INCOME**

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

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

#### YHA Policy

For persons who regularly receive bonuses or commissions, the YHA will verify and then average amounts received for the previous year preceding admission or reexamination. If less than a one-year history is available, the YHA will use the information available. In either case the family may provide, and the YHA will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, the YHA will count only the amount estimated by the employer.

For streamlined income verification, in addition to the EIV, the YHA will use at least the last 2 current consecutive payroll stubs.

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

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**Types of Earned Income Not Counted in Annual Income**

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

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

YHA Policy

Sporadic income is income that is not received periodically and cannot be reliably predicted. For example, the income of an individual who works occasionally as a handyman would be considered sporadic if future work could not be anticipated and no historic, stable pattern of income existed. If there is a historic trend or stable pattern of working, even if it for limited durations and amounts, then it will be considered income and counted in the calculation.

***Children's Earnings.*** Employment income earned by children (including foster children) under the age of 18 years is not included in annual income [24 CFR 5.609(c)(1)]. (See Eligibility chapter for a definition of *foster children*.)

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

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

***Income Earned under Certain Federal Programs.*** Income from some federal programs is specifically excluded from consideration as income [24 CFR 5.609(c)(17)], including:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)) Workforce Development
- Awards under the federal work-study program (20 U.S.C. 1087 uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

***Resident Service Stipend.*** Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for the YHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and

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serving as a member of the YHA's governing board. No resident may receive more than one such stipend during the same period of time [24 CFR 5.600(c)(8)(iv)].

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

#### YHA Policy

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

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

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

End of participation in a training program must be reported in accordance with the YHA's interim reporting requirements.

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

#### YHA Policy

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

***Earned Income Tax Credit.*** Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)), are excluded from annual income [24 CFR 5.609(c)(17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be

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received throughout the year. The prorated share of the annual EITC is included in the employee's payroll check.

**Earned Income Disallowance.** The earned income disallowance for persons with disabilities is discussed in section 6-I.E below.

### **6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES [24 CFR 5.617]**

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

#### **Eligibility**

This disallowance applies only to individuals in families already participating in the HCV program. To qualify, the family must experience an increase in annual income that is the result of one of the following events:

- Employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment. *Previously unemployed* includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage (\$3.625) unless there is a higher state or local minimum wage.
- Increased earnings by a family member who is a person with disabilities and whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].
- New employment or increased earnings by a family member who is a person with disabilities and who has received benefits or services under Temporary Assistance for Needy Families (TANF) or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly cash maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least \$500.

#### **Calculation of the Disallowance**

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "prior income."

#### YHA Policy

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

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

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

#### YHA Policy

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings, whether the family reports the earnings or not.

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

***Window of Opportunity.*** The EID has a twenty-four (24) month window of opportunity. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance.

#### YHA Policy

During the 24-month eligibility period, the YHA will schedule and conduct an interim reexamination each time there is a change in the family member's annual income that affects or is affected by the EID (e.g., when the family member's income falls to a level at or below his/her prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period). Any changes to the family income or composition must still be reported by the family within (10) ten days of the change.

For families that were in the EID when the streamlining regulations became effective on March 2016, the window of opportunity remains 48 months. Families eligible for and participating in the disallowance of earned income under this section prior to May 9, 2016 will continue to be governed by the 48 month window of opportunity.

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

Annual income includes "the net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family" [24 CFR 5.609(b)(2)].

### **Business Expenses**

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

#### YHA Policy

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

### **Business Expansion**

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

#### YHA Policy

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

### **Capital Indebtedness**

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

#### YHA Policy

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

### **Negative Business Income**

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

### **Withdrawal of Cash or Assets from a Business**

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

#### YHA Policy

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of an assisted family provided an up-front loan of \$2,000 to help a business get started, the YHA will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid.

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Investments do not include the value of labor contributed to the business without compensation.

### **Co-owned Businesses**

#### YHA Policy

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

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

#### **Overview**

The YHA may use any or all of the streamline procedures and verification processes as allowed by HUD. There is no asset limitation for participation in the HCV program. However, HUD requires that the YHA include in annual income the "interest, dividends, and other net income of any kind from real or personal property" [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, the YHA must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

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

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

#### **Streamlining Verification of Assets**

YHA will use the streamlining of assets at recertification according to the following. For a family with net assets equal to or less than \$5,000, YHA may accept a family's declaration that it has net assets equal to or less than \$5,000, without taking additional steps to verify the accuracy of the declaration.

- The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.
- YHA must obtain third-party verification of all family assets every 3 years.

#### **General Policies**

##### ***Income from Assets***

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

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property is currently vacant, the YHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

YHA Policy

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

***Valuing Assets***

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

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

YHA Policy

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

***Lump-Sum Receipts***

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

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

When net family assets are \$5,000 or less, the YHA will include in annual income the actual income anticipated to be derived from the assets. When the family has net family assets in excess of \$5,000, the YHA will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by the current HUD-established passbook savings rate. If the total value of the assets (TVA) is less than \$5,000, the YHA will allow the applicant/participant to self-certify on the asset and will use the actual amount that is certified.

The HUD field office no longer provides an interest rate for imputed asset income. The "safe harbor" is now for the YHA to establish a passbook rate within 0.75 percent of a national average.

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The YHA must review its passbook rate annually to ensure that it remains within 0.75 percent of the national average.

YHA Policy

The YHA will initially set the imputed asset passbook rate at the national rate established by the Federal Deposit Insurance Corporation (FDIC).

The YHA will review the passbook rate annually during the Agency Planning process to reestablish the rate.

Changes to the passbook rate will take effect after the YHA reestablishes the rate.

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

It may or may not be necessary for the YHA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is not based on the property's net cash value which in this case is the greater return that would be provided from the amount derived from the income stream. However, if the asset is a savings account, the anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

***Withdrawal of Cash or Liquidation of Investments***

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

***Jointly Owned Assets***

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

YHA Policy

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

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

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

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

***Minimum Threshold***

The *HVC Guidebook* permits the YHA to set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

**YHA Policy**

The YHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than \$5,000.

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

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

***Separation or Divorce***

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

**YHA Policy**

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

***Foreclosure or Bankruptcy***

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

***Family Declaration***

**YHA Policy**

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

**Types of Assets**

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***Checking and Savings Accounts***

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

**YHA Policy**

In determining the value of a checking account, the YHA will use the average balance of the last 6 months.

In determining the value of a savings account, the YHA will use the average balance of the last 6 months.

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

If lieu of the calculation described above, the YHA can use the actual received over the last calendar year in determining the anticipated amount of interest if it is anticipated that the average balance will remain constant (similar to the balance for the last twelve months).

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

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

**YHA Policy**

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

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

***Equity in Real Property or Other Capital Investments***

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

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

- Equity accounts in HUD homeownership programs [24 CFR5.603(b)]

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

A family may have real property as an asset in two ways: (1) owning the property itself and (2) holding a mortgage or deed of trust on the property. In the case of a property owned by a family member, the anticipated asset income generally will be in the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero.

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

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

### YHA Policy

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

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

### *Trusts*

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

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*Revocable Trusts*

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

*Nonrevocable Trusts*

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

***Retirement Accounts***

*Company Retirement/Pension Accounts*

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

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

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

*IRA, Keogh, and Similar Retirement Savings Accounts*

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

***Personal Property***

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

YHA Policy

In determining the value of personal property held as an investment, the YHA will use the family's estimate of the value, unless the family already has obtained a qualified appraisal of the property. In the case of an appraisal the qualified appraisal will be used.

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

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

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YHA Policy

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

***Life Insurance***

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

**6-I.H. PERIODIC PAYMENTS**

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

**Periodic Payments Included in Annual Income**

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

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

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security VA Disability, or supplemental security income (SSI) payments are not counted as income [CFR 5.609(b)(4)].

YHA Policy

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

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

The YHA must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period,

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the YHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2012-10].

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

Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 CFR 5.609(c)(2)] Kinship guardianship assistance payments (Kin-GAP) and other similar guardianship payments are treated the same as foster care payments and are likewise excluded from annual income [Notice PIH 2012-1].

### YHA Policy

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

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

## **6-I.I. PAYMENTS IN LIEU OF EARNINGS**

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

## **6-I.J. WELFARE ASSISTANCE**

### **Overview**

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

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

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

***Covered Families***

The families covered by 24 CFR 5.615 are those “who receive welfare assistance or other public assistance benefits (‘welfare benefits’) from a State or other public agency (‘welfare agency’) under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance” [24 CFR 5.615(b)]

***Imputed Income***

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

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements, or (4) for inadvertent overpayment [24 CFR 5.615(b)(2)].

***Offsets***

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

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

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

**Alimony and Child Support**

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

**YHA Policy**

The YHA will count court-awarded amounts for alimony and child support unless the YHA verifies that (1) the payments are not being made and (2) the family has made

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reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47].

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

### **Regular Contributions or Gifts**

The YHA must count as income regular monetary and non-monetary contributions or gifts from persons not residing with an assisted family [24 CFR 5.609(b)(7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

#### YHA Policy

Examples of regular contributions include: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.

Non-monetary contributions will be valued at the cost of purchasing the items, as determined by the YHA. For contributions that may vary from month to month (e.g., utility payments), the YHA will include an average amount based upon past history. The family will be required to provide a copy of paid bills upon YHA request.

### **Student Financial Assistance**

For the Section 8 Program only, and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition and fees, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education, shall be considered income to the individual, except that financial assistance described in this section is not considered income for persons over the age of 23 with dependent children. For purposes of determining income, financial assistance does not include loan proceeds.

#### **Student Financial Assistance Included in Annual Income [24 CFR 5.609(b)(9) and FR 4/10/06]**

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

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

For students who satisfy these three conditions, any financial assistance in excess of tuition and **any other required fees** and charges received: (1) under the 1965 HEA, (2) from a private

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source, or (3) from an institution of higher education, as defined under the 1965 HEA, must be included in annual income.

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

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

- Students residing with parents who are seeking or receiving Section 8 assistance
- Students who are enrolled in an educational institution that does **not** meet the 1965 HEA definition of *institution of higher education*
- Students who are over 23 **AND** have at least one dependent child, as defined in section 3-II.E Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.

**6-I.L. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME**

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

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- Subject to the additional income inclusion for the HCV program on annual income for students of higher education, the full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR 5.609(c)(6)], except that in accordance with Section 224 of the FY 2005 Appropriations Act, the portion of any athletic scholarship assistance available for housing costs must be included in annual income [PIH Notice 2005-16].
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
- Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]

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- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17)]. HUD publishes an updated list of these exclusions periodically. It includes:
    - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b)) (SNAP)
    - (b) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
    - (c) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
    - (d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
    - (e) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
    - (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
    - (g) Payments received under programs funded in whole or in part under the Workforce Reinvestment (29 U.S.C. 1552(b)) (Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931).)
    - (h) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
    - (i) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
    - (j) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
    - (k) Subject to the annual income inclusions for the HCV Program 24 CFR 5.609 (b) (9), the amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under the federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu)- See exception for Student Rule.
    - (l) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
    - (m) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent*-product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
    - (n) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)

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- (o) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
  - (p) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
  - (q) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
  - (r) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
  - (s) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805)
  - (t) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)
  - (u) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
  - (v) The EID income exclusions as allowed for the regulations.
  - (w) The Medicare incentive payments.
  - (x) Kinship Care and guardian assistance payments through the state.
  - (y) Temporary Census workers.
  - (z) Stimulus programs that are specifically exempt. Kin Care or Guardian Care
  - (aa) Assistance from the Richard B Russell National School Lunch Program
  - (bb) Payments Under the Seneca Nation Settlement Act
  - (cc) Compensation on behalf of a veteran for service connected disability, death, dependency, or indemnity compensation in programs authorized under the Native American Assistance and Self-Determination Act of 1996
  - (dd) Federal major disaster and emergency assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance
  - (ee) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013-30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a))

## **PART II: ADJUSTED INCOME**

### **6-II.A. INTRODUCTION**

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## **Overview**

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

5.611(a) Mandatory Deductions. In determining adjusted income, the responsible entity [YHA] must deduct the following amounts from annual income:

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

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

## **Anticipating Expenses**

### YHA Policy

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

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

## **6-II.B. DEPENDENT DEDUCTION**

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

## **6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION**

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A single deduction of \$400 is taken for any elderly or disabled family [24 CFR 5.611(a)(2)]. An *elderly family* is a family whose head, spouse, co-head, or sole member is 62 years of age or older, and it may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live in aides. A *disabled family* is a family whose head, spouse, co-head, or sole member is a person with disabilities and it may include two or more persons who are disabled living together, or one or more persons who are disabled living with one or more live in aides. [24 CFR 5.403].

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

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

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

#### **Definition of *Medical Expenses***

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

#### **YHA Policy**

The following will be used to determine the costs that qualify as medical expenses:

Services of doctors and health care professionals;

Services of health care facilities;

Medical insurance premiums or costs of an HMO;

Prescription/non-prescription medicines that have been prescribed by a physician;

Transportation to treatment;

Dental expenses;

Eyeglasses, hearing aids, batteries;

Live-in or periodic medical assistance, such as, nursing services, or costs for assistance

Service animal and its upkeep;

Payments on accumulated medical bills;

Medical care of an institutionalized family member if his/her income is included in the annual income; and

Long-term care insurance premiums. The family member paying a longer term care insurance premium must sign the certification form that states the insurance is guaranteed renewable, does not provide a cash surrender value, will not cover expenses covered under Medicare, and restricts the use of refunds.

#### **Families That Qualify for Both Medical and Disability Assistance Expenses**

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YHA Policy

This policy applies only to families in which the head, spouse, or co-head is 62 or older, a disabled family, or when a family also includes a person with disabilities that qualifies for a disability expense.

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

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

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

**Earned Income Limit on the Disability Assistance Expense Deduction**

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

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

YHA Policy

The family must identify the family members enabled to work as a result of the disability assistance expenses. When the YHA determines the disability assistance expenses enable the family member to work, the expenses will be capped by the sum of the family members’ earned income of the individual freed to go to work.

**Eligible Disability Expenses**

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

HUD advises YHA to further define and describe auxiliary apparatus [VG, p. 30].

***Eligible Auxiliary Apparatus***

YHA Policy

The YHA defines eligible auxiliary apparatus as those listed in the HCV GB; p 5-30 as stated above.

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

### ***Eligible Attendant Care***

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

#### **YHA Policy**

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

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

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

### ***Payments to Family Members***

No disability assistance expenses may be deducted for payments to a member of an assisted family [24 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the assisted family may be deducted if they are not reimbursed by an outside source.

### **Necessary and Reasonable Expenses**

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

#### **YHA Policy**

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

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## Families That Qualify for Both Medical and Disability Assistance Expenses

### YHA Policy

This policy applies only to families in which the head, spouse, or co-head is 62 or older, a disabled family, or when a family also includes a person with disabilities that qualifies for a disability expense.

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

## 6-III.F. CHILD CARE EXPENSE DEDUCTION

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

### YHA Policy

The reasonableness standard for allowing childcare expenses as a deduction uses the following standards:

Child care to work: The maximum childcare allowed will be based on the amount earned by the person enabled to work.

Child care to further education: The YHA will compare the number of hours the family member is attending school and base the reasonableness standard on the number of hours attending school and study time versus the number of hours claimed for child care.

Rate of Expense: The YHA will use the local welfare agency’s standard in the area to determine a reasonableness standard for furthering education or seeking employment. The determination will be made on a reasonable hourly/weekly/monthly rate per child.

If the YHA determines the childcare is unreasonable according to this standard, the standard may be used as the maximum.

If the child care provider is an unlicensed individual, the individual must provide their Social Security Number and a notarized statement of the amount that individual is being paid and a copy of the individual provider’s income tax return, and Misc-1099 to verify payment or a child care allowance or it will not be given.

### **Clarifying the Meaning of *Child* for This Deduction**

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family’s household [VG, p. 26]. However, childcare expenses for

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foster children that are living in the assisted family's household, are included when determining the family's child care expenses [HCV GB, p. 5-29].

### **Qualifying for the Deduction**

#### ***Determining Who Is Enabled to Pursue an Eligible Activity***

##### YHA Policy

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

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

#### ***Seeking Work***

##### YHA Policy

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

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To qualify for childcare deductions under the provision of actively seeking employment, the family member may be a participant in an official job search program or may simply demonstrate independent job search activities. In either case, in order to verify the time spent in seeking employment, YHA will require the family to maintain a log that reflects the following:

The date and time of departure from home, (including time needed to drop off children for childcare, if provided outside the home);

The name and location of the prospective employer, unemployment office or employment agency;

The name of the person(s) contacted and telephone number;

The length of time for completion of the application, the interview, testing or other job search activity;

The time the children are picked up and the time arrived at home;

The name, address, telephone number and social security number of the childcare provider; and

The total amount paid for the childcare.

If multiple applications or interviews are held consecutively or on the same day, the above information should be provided for each prospective employer or agency. YHA will use this information to verify the contacts and the eligibility of childcare expenses. Since job search activities may be irregular and not easily anticipated, YHA may attempt a limited inclusion at the annual certification and conduct an interim examination after some actual expenditures have been incurred. In many instances, job search periods will be of limited duration, but in some cases the job search period may be extended, especially if the type of employment sought is limited in availability, employment opportunities of any kind are scarce or the job skills needed are unusual.

### ***Furthering Education***

#### **YHA Policy**

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

### ***Being Gainfully Employed***

#### **YHA Policy**

If the child care expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that child care is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated. Child care will be capped by the amount of earned income of the individual that is freed to work. In the case of

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EID, the cap for the amount of earned income will be the amount that is included in the Annual Income after the EID is applied for the individual that is freed to work.

### **Earned Income Limit on Child Care Expense Deduction**

When a family member looks for work or furthers his or her education, the cap on the amount that may be deducted for child care is established a reasonable amount as determined by the YHA. However, when child care enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)].

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

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

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

#### YHA Policy

When the child care expense being claimed is to enable a family member to work, only one family member’s income will be considered for a given period of time. When more than one family member works during a given period, the YHA generally will limit allowable child care expenses to the earned income of the individual that is freed to go to work.

### **Eligible Child Care Expenses**

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

#### ***Allowable Child Care Activities***

#### YHA Policy

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

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

If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, the

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YHA will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

***Necessary and Reasonable Costs***

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

**YHA Policy**

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

To establish the reasonableness of child care costs, the YHA will use the schedule of child care costs from either the local welfare agency or from qualified professional services in the area. Families may present, and the YHA will consider, justification for costs that exceed typical costs in the area.

**PART III: CALCULATING FAMILY SHARE AND YHA SUBSIDY**

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

**TTP Formula [24 CFR 5.628]**

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

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

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

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

***Welfare Rent [24 CFR 5.628]***

**YHA Policy**

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Welfare rent does not apply in this locality.

***Minimum Rent [24 CFR 5.630]***

YHA Policy

**The minimum rent for this locality is \$50.00.**

**Family Share [24 CFR 982.305(a)(5)]**

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the YHA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy the YHA may not approve the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. The income used for this determination must have been verified no earlier than 60 days before the family's voucher was issued. (For a discussion of the application of payment standards, see section 6-III.C.)

**YHA Subsidy [24 CFR 982.505(b)]**

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

**Utility Reimbursement [24 CFR 982.514(b)]**

When the YHA subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement. HUD permits the YHA to pay the reimbursement to the family or directly to the utility provider.

The YHA may elect to establish policies regarding the frequency of utility reimbursement payments for payments made to the family. The YHA has the option of making utility reimbursement payments not less than once per calendar-year quarter, for reimbursements totaling \$45 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the YHA would be required to reimburse the family for a prorated share of the applicable reimbursement. If YHA exercises this option, then YHA must have a hardship policy in place for tenants.

If YHA elects to pay the utility supplier directly, the YHA must notify the family of the amount paid to the utility supplier.

YHA defines hardship as a loss of income that will be greater than 90 days and due to no fault of the participant.

YHA Policy

The YHA will make utility reimbursements to the utility company.

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

YHA Policy

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**The financial hardship rules described below do apply in this jurisdiction because the YHA has established a minimum rent of \$50.00.**

### **Overview**

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

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

### **HUD-Defined Financial Hardship**

Financial hardship includes the following situations:

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

#### YHA Policy

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

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

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

#### YHA Policy

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

- (3) Family income has decreased because of changed family circumstances, including the loss of employment.
- (4) A death has occurred in the family.

#### YHA Policy

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

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

#### YHA Policy

The YHA has not established any additional hardship criteria.

**Implementation of Hardship Exemption**

***Determination of Hardship***

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

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

YHA Policy

The YHA defines temporary hardship as a hardship expected to last 90 days or less.

Long term hardship is defined as a hardship expected to last more than 90 days.

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

<b>Example: Impact of Minimum Rent Exemption</b>			
Assume the YHA has established a minimum rent of \$35.			
<b>Family Share – No Hardship</b>		<b>Family Share – With Hardship</b>	
\$0	30% of monthly adjusted income	\$0	30% of monthly adjusted income
\$15	10% of monthly gross income	\$15	10% of monthly gross income
N/A	Welfare rent	N/A	Welfare rent
\$35	Minimum rent	\$35	Minimum rent
Minimum rent applies. TTP = \$35		Hardship exemption granted. TTP = \$15	

YHA Policy

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

The YHA will make the determination of hardship within 30 business days.

***No Financial Hardship***

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

YHA Policy

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

***Temporary Hardship***

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

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

YHA Policy

The YHA will enter into a repayment agreement in accordance with the procedures found in Chapter 16 of this plan.

***Long-Term Hardship***

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

YHA Policy

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

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

**6-III.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505]**

**Overview**

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

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

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under the YHA's subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family.

If the YHA has established an exception payment standard for a designated part of an FMR area and a family's unit is located in the exception area, the YHA must use the appropriate payment standard for the exception area.

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

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

### **Changes in Payment Standards**

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

#### ***Decreases***

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

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

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

**Step 3:** At the second regular reexamination following the decrease in the payment standard, the lower payment standard will be used to calculate the monthly housing assistance payment for the family unless the YHA has subsequently increased the payment standard, in which case the

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payment standard will be determined in accordance with procedures for increases in payment standards described below.

***Increases***

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

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

***Changes in Family Unit Size***

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

**Reasonable Accommodation**

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, the YHA is allowed to establish a higher payment standard for the family within the basic range (90-110 percent). YHA may also request a HUD approval for a payment standard within 110%-120% as a reasonable accommodation.

**6-III.D. APPLYING UTILITY ALLOWANCES [24 CFR 982.517]**

**Overview**

**Utility Standards**

For the tenant-based HCV program, the YHA must use the appropriate utility allowance for the lesser of the size of dwelling unit actually leased by the family or the family unit size as determined under the YHA subsidy standards. In cases where the unit size leased exceeds the family unit size as determined under the YHA subsidy standards as a result of a reasonable accommodation, the YHA must use the appropriate utility allowance for the size of the dwelling unit with the authorized increase for the unit leased by the family.

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

**Reasonable Accommodation**

HCV program regulations require a 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 for air-conditioning, the YHA will approve an allowance for air-conditioning, even if the YHA has determined that an allowance for air-conditioning generally is not needed.

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

### **Utility Allowance Revisions**

At reexamination, 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 that is effective after the allowance is adopted.

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

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The YHA must prorate the assistance provided to a mixed family. The YHA will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible. For example, if the YHA subsidy for a family is calculated at \$500 and two of four family members are ineligible, the YHA subsidy would be reduced to \$250.

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**EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS**

**24 CFR 5.609**

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

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

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

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31<sup>1</sup>; and

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

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section)

(9) For Section 8 programs only and as provided in 24 CFR 5.612, any financial

assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education, shall be considered income to the individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

(10) The amount of the "housing" portion of an athletic scholarship.

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<sup>1</sup> Text of 45 CFR 260.31 follows.

**HEALTH AND HUMAN SERVICES  
DEFINITION OF "ASSISTANCE"**

**45 CFR: GENERAL TEMPORARY  
ASSISTANCE FOR NEEDY FAMILIES**

**260.31 What does the term “assistance”  
mean?**

(a)(1) The term “assistance” includes cash, payments, vouchers, and other forms of benefits designed to meet a family’s ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) [The definition of “assistance”] excludes: (1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

**EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS**

**24 CFR 5.609**

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

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) Subject to paragraph (b) (9) of the inclusions, the full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8) (i) Amounts received under training programs funded by HUD;  
(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they

are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

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

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

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]

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

a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));

b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);

c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931);

g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L- 94-540, 90 Stat. 2503-04);

h) The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);

i) Except as indicated in the ineligible student provisions of included income, the amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

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

k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

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

m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

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

o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

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

q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);

r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and

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

t) The Medicare incentive allowance

**EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS**

**24 CFR 5.603(b) Net Family Assets**

(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor.

In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

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

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

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

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

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

*Disallowance.* Exclusion from annual income.

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

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

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

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

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

(1) Initial twelve month exclusion. During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

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(2) Second twelve month exclusion and phase-in. During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) Maximum two year disallowance. The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 24 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 24 month period starting from the initial exclusion under paragraph (c)(1) of this section.

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

**EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION**

**24 CFR 5.615**

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

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

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

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

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

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

*Specified welfare benefit reduction.*

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

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

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) *Imputed welfare income.*

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

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

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

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

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

*(d) Review of PHA decision.*

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

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

basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

*(e) PHA relation with welfare agency.*

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

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

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

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## **Chapter 7**

### **VERIFICATION**

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

#### **INTRODUCTION**

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

The YHA will follow the verification guidance provided by HUD in PIH Notice 2004-01, PIH 2010-19 Verification Guidance, PIH 2012-26, PIH 2013-3, PIH 2013-4, PIH 2013-23, PIH 2013-26, PIH 2015-02, PIH 2015-04, streamlining and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary YHA policies.

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

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

#### **PART I. GENERAL VERIFICATION REQUIREMENTS**

##### **7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 982.516 AND 982.551, 24 CFR 5.230]**

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

##### **Consent Forms**

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

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**Penalties for Failing to Consent [24 CFR 5.232]**

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

**7.I.B. OVERVIEW OF VERIFICATION REQUIREMENTS**

**Overview**

On December 29, 2009, HUD issued the final rule entitled *Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification (EIV) System-Amendments*, which requires PHAs to use the EIV system in its entirety to verify tenant employment and income information during mandatory reexaminations of family composition and income; and reduce administrative and subsidy payment errors in accordance with 24 CFR §5.236 and administrative guidance issued by HUD.

Using EIV as an upfront income verification (UIV) technique is a valuable in validating tenant-reported income during interim and annual reexaminations of family income; as well as streamlining the income verification process. This will result in less administrative burden in complying with third party verification requirements. Additionally, EIV will help to identify and cure inaccuracies in housing subsidy determinations, which will benefit PHAs, tenants, and taxpayers by ensuring that the level of benefits provided on behalf of families is proper and will prevent fraud and abuse within Public and Indian Housing (PIH) rental assistance programs.

**YHA Policy**

The YHA is required to use the EIV system in its entirety. This means the YHA must use all features of the EIV system to:

- Verify tenant employment and income information during mandatory reexaminations of family composition and income in accordance with 24 CFR §5.236, and HUD administrative guidance; and
- Reduce administrative and subsidy payment errors in accordance with HUD administrative guidance.

**Streamlining Verification of Assets**

The YHA has elected to use the streamlining verification of assets. For a family with net assets equal to or less than \$5,000, the YHA may accept, for purposes of recertification of income, a family's declaration that it has net assets equal to or less than \$5,000, without taking additional steps to verify the accuracy of the declaration.

- The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.
- The YHA must obtain third-party verification of all family assets every 3 years.

**Streamlining Verification of Income**

YHA has elected to use the streamlining verification of income. For any family member with a fixed source of income, the YHA may elect to determine that family member's income by

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means of a streamlined income determination. A streamlined income determination must be conducted by applying, for each fixed-income source, the verified cost of living adjustment (COLA) or current rate of interest to the previously verified or adjusted income amount.

The “Family member with a fixed source of income” is defined as a family member whose income includes periodic payments at reasonably predictable levels from one or more of the following sources:

- Social Security, Supplemental Security Income, Supplemental Disability Insurance;
- Federal, state, local, or private pension plans;
- Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; or
- Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

In using the streamlining, the YHA must use a COLA or current rate of interest specific to the fixed source of income in order to adjust the income amount. The YHA must verify the appropriate COLA or current rate of interest from a public source or through tenant-provided, third party– generated documentation. If no such verification is available, then the YHA must obtain third-party verification of income amounts in order to calculate the change in income for the source.

For any family member whose income is determined pursuant to a streamlined income determination, the YHA must obtain third-party verification of all income amounts every 3 years.

### **File Documentation**

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

#### YHA Policy

The YHA will document, in the family file, the following:

- Reported family annual income
- Value of assets
- Expenses related to deductions from annual income
- Other factors influencing adjusted income

When the YHA is unable to obtain third-party verification, the YHA will document in the family file the reason that third-party verification was not available [24 CFR 982.516(a)(2); Notice PIH 2010-19].

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## **The EIV System**

The EIV System is a web-based application, which provides YHA with employment, wage, unemployment compensation and social security benefit information of tenants who participate in the Public Housing and various Section 8 programs under the jurisdiction of the Office of Public and Indian Housing (PIH). This system is available to YHA. Information in EIV is derived from computer matching programs initiated by HUD with the Social Security Administration (SSA) and the U.S. Department of Health and Human Services (HHS), for all program participants with valid personal identifying information (name, date of birth (DOB), and social security number (SSN)) reported on the form HUD-50058.

YHA is required to review the EIV Income Report of each family before or during mandatory annual and interim reexaminations of family income and/or composition to reduce tenant under reporting of income and improper subsidy payments. EIV is classified as an UIV technique (or automated written third party verification), which helps to identify income sources and/or amounts that the tenant may not have disclosed. This UIV technique in many instances will reduce the need to mail or fax third party verification request forms to an income source. EIV also provides various reports to assist YHA with the following:

- Identifying tenants whose reported personal identifiers do not match the SSA database;
- Identifying tenants who need to disclose a SSN;
- Identifying tenants whose alternate identification number (Alt ID) needs to be replaced with a SSN;
- Identifying tenants who may not have reported complete and accurate income information;
- Identifying tenants who have started a new job;
- Identifying tenants who may be receiving duplicate rental assistance;
- Identifying tenants who are deceased and possibly continuing to receive rental assistance;
- Identifying former tenants of PIH rental assistance programs who voluntarily or involuntarily left the program and have a reportable adverse status and/or owe money to a PHA or Section 8 landlord.

## YHA Policy

All YHA staff (including YHA-hired management agents), who have a need to access the EIV system, is required to complete and submit the EIV Access Authorization Form & Rules of Behavior and User Agreement to their designated EIV Coordinator in the local HUD office. The form is available online at:

<http://www.hud.gov/offices/pih/programs/ph/rhiip/uivsystem.cfm>.

The user's access must be approved by the YHA Executive Director or designee in order for the local HUD office to process all EIV access requests. Individuals who will not directly access the EIV system, but will have access to the EIV data in printed or electronic form is also required to complete the EIV Access Authorization Form & Rules of Behavior and User Agreement and maintain on file (do not submit the form to the local HUD office).

**The Verification Hierarchy**

YHA Policy

The YHA will begin with the highest level of verification techniques. The YHA is required to access the EIV system and obtain an Income Report for each household. The YHA is required to maintain the Income Report in the tenant file along with the form HUD-50058 and other supporting documentation to support income and rent determinations for all mandatory annual reexaminations of family income and composition.

If the Income Report does not contain any employment and income information for the family, the YHA will attempt the next lower level verification technique, as noted in the below chart.

**Level Verification Technique Ranking**

Level	Verification Technique	Ranking
6	<b>Upfront Income Verification (UIV)</b> using HUD’s Enterprise Income Verification (EIV) system (not available for income verifications of applicants)	Highest (Mandatory)
5	<b>Upfront Income Verification (UIV)</b> using non-HUD system	Highest (Optional)
4	<b>Written third Party Verification</b>	<b>High</b> (Mandatory to supplement EIV-reported income sources and when EIV has no data; Mandatory for non-EIV reported income sources; Mandatory when tenant disputes EIV- reported employment and income information <b>and</b> is unable to provide acceptable documentation to support dispute)
3	<b>Written Third Party Verification Form</b>	<b>Medium-Low</b> (Mandatory if written third party verification documents are not available or rejected by the PHA; and when the applicant or tenant is unable to provide acceptable documentation) <b>Low</b> (Mandatory if written third party verification is not available)
2	<b>Oral Third Party Verification</b>	<b>Low</b> (Mandatory if written third party verification is not available)

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<b>1</b>	<b>Tenant Declaration</b>	<b>Low</b> (Use as a last resort when unable to obtain any type of third party verification)
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This verification hierarchy applies to income determinations for applicants and participants. However, EIV is not always available for verifying income of applicants. The YHA is still required to use EIV for applicants to determine other factors as relates to eligibility and maintain a copy of the record in the file.

**Verification Technique Definitions Third Party Verification Techniques**

**Upfront Income Verification (UIV) (Level 6/5)**

The verification of income before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a number of individuals.

The EIV system is available to the YHA as a UIV technique. The YHA is encouraged to continue using other non-HUD UIV tools, such as The Work Number (an automated verification system) and state government databases, to validate tenant-reported income when available.

**Written Third Party Verification (Level 4)**

An original or authentic document generated by a third party source dated either within the 60-day period preceding the reexamination or the YHA request date. Such documentation may be in the possession of the tenant (or applicant), and is commonly referred to as tenant-provided documents.

These tenant-provided documents are considered written third party verification since they originated from a third party source. The YHA may, at its discretion reject any tenant-provided documents and follow up directly with the source to obtain necessary verification of information.

Examples of acceptable tenant-provided documentation (generated by a third party source) include, but are not limited to:

- Pay stubs,
- Payroll summary report,
- Employer notice/letter of hire/termination,
- SSA benefit verification letter,
- Bank statements,
- Child support payment stubs,
- Welfare benefit letters and/or printouts, and;
- Unemployment monetary benefit notices.
- Current acceptable tenant-provided documents must be used for income and rent determinations.

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The YHA is required to obtain at a minimum, two current and consecutive pay stubs for determining annual income from wages. For new income sources or when two pay stubs are not available, the YHA should project income based on the information from a traditional written third party verification form or the best available information.

**Documents older than 60 days (from the YHA interview/determination or request date) is acceptable for confirming effective dates of income.**

### **Written Third Party Verification Form (Level 3)**

Also, known as traditional third party verification. A standardized form to collect information from a third party source. The form is completed by the third party by hand (in writing or typeset). The YHA sends the form directly to the third party source by mail, fax, or email.

#### YHA Policy

It is the YHA's position that the administrative burden and risk associated with use of the traditional third party verification form may be reduced by the YHA relying on acceptable documents that are generated by a third party, but in the possession of and provided by the tenant (or applicant). Many documents in the possession of the tenant are derived from third party sources (i.e. employers, federal, state and/or local agencies, banks, etc.).

The YHA recognizes that third party verification request forms sent to third party sources often are not returned. In other instances, the person who completes the verification form may provide incomplete information; or some tenants may collude with the third party source to provide false information; or the tenant intercepts the form and provides false information.

Documents must originate from a third party source's computerized system and/or database, as this process reduces the likelihood of incorrect or falsified information being provided on the third party verification request form. The use of acceptable tenant-provided documents, which originate from a third party source, will improve the integrity of information used to determine a family's income and rent and ultimately reduce improper subsidy payments. This verification process will also streamline the income verification process.

### **Oral Third Party Verification (Level 2)**

Independent verification of information by contacting the individual income/expense source(s), as identified through the UIV technique or identified by the family, via telephone or in-person visit. YHA staff should document in the tenant file, the date and time of the telephone call (or visit to the third party), the name of the person contacted and telephone number, along with the confirmed information.

#### YHA Policy

This verification will be used in the event that the independent source does not respond to the YHA's faxed, mailed, or e-mailed request for information in a reasonable time frame, i.e., ten (10) business days.

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**Non-Third Party Verification Technique Tenant Declaration (Level 1)**

The tenant submits an affidavit or notarized statement of reported income and/or expenses to the YHA. This verification method should be used as a last resort when the YHA has not been successful in obtaining information via all other verification techniques. When the YHA relies on tenant declaration, the YHA must document in the tenant file why third party verification was not available.

**Exceptions to Third Party Verification Requirements 24 CFR §960.259(c)(1) and §982.516(a)(2)**

The exception to third party verification is, “The YHA must obtain and document in the family file third party verification of the following factors, **or must document in the file why third party verification was not available.**”

If third party verification is not available for a variety of reasons These reasons include::

- The YHA may have made numerous attempts to obtain the required verifications with no success, or
- It may not be cost effective to obtain third party verification of income, assets, or expenses, when the impact on total tenant payment is minimal.

In these cases, the YHA is **required to document in the family file the reason(s) why third party verification was not available.**

The exception to third party verification can be found at 24 CFR §960.259(c)(1) and §982.516(a)(2).

**Third party verification requirements 24 CFR §960.259(c)(1) and 24 CFR §982.516(a)(2)**

In accordance with for the Public Housing and the HCV programs, respectively, the YHA must obtain and document in the tenant file third party verification of the following factors, or must document in the tenant file why third party verification was not available:

- Reported family annual income
- The value of assets
- Expenses related to deductions from annual income
- Other factors that affect the determination of adjusted income.

**Compliance and reduction of the administrative burden of third party verification requirements of family annual income**

YHA can comply with and reduce administrative burden of third party verification requirements for employment, wage, unemployment compensation and social security benefits, and any other information that is verifiable using EIV by all of the following:

- Reviewing the EIV Income Report to confirm/validate tenant-reported income
- Printing and maintaining an EIV Income Report (or an EIV Individual Control Number (ICN) page for interim reexaminations) in the tenant file
- Obtaining current acceptable tenant-provided documentation to supplement EIV

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information

- Using current tenant-provided documentation and/or third party verification to calculate annual income.

*Note:* Social Security benefit information in EIV is updated every three months. If the tenant agrees with the EIV-reported benefit information, YHA does not need to obtain or request a benefit verification letter from the tenant. See PIH Notice 2010-03 for guidance on verifying Social Security benefit income through the EIV system.

The YHA may also reduce the administrative burden of obtaining third party verification by relying on acceptable documents that are generated by a third party, but provided by the tenant. Many documents in the possession of the tenant are derived from third party sources (i.e. employers, federal, state and/or local agencies, banks, etc.).

The YHA must request written third party verification under the following circumstances:

- When the tenant disputes the EIV information and is unable to provide acceptable documentation to support his/her dispute (24 CFR §5.236(b))
- When the YHA requires additional information that is not available in EIV and /or the tenant is unable to provide the YHA with current acceptable tenant-provided documentation.

Examples of additional information, includes but is not limited to:

- Effective dates of income (i.e. employment, unemployment compensation, or social security benefits)
- For new employment: pay rate, number of hours worked per week, pay frequency, etc.
- Confirmation of change in circumstances (i.e. reduced hours, reduced rate of pay, temporary leave of absence, etc.)

*Note:* 24 CFR §5.236(a), prohibits YHA from taking adverse action based solely on EIV information.

**Types of file documentation required to demonstrate YHA compliance with mandated use of EIV as a third party source to verify tenant employment and income information (24 CFR §5.233(a)(2)(i)).**

1. For each new admission (form HUD-50058 action type 1), 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.
2. For each historical adjustment (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

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- Print and maintain a copy of the EIV Income Report in the tenant file;
  - Resolve any income discrepancy with the family within 60 days of the EIV Income Report date.
3. For each interim reexamination (form HUD-50058 action type 3) of family income and composition, YHA is required to have the following documentation in the tenant file:
- **ICN Page** when there is **no** household income discrepancy noted on the household's Income Discrepancy Report tab or Income Discrepancy Report. The YHA has the discretion to print the EIV Income report, however, only the ICN page is required.

The EIV Income Report provides a summary when there **is** an income discrepancy noted on the household's Income Discrepancy Report tab or Income Discrepancy Report. 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).

### **Tenants That Do Not Provide the YHA with Requested Information**

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 shall 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,

### **Using the EIV to Reduce Administrative and Subsidy Payment Errors.**

EIV has the ability to identify other potential issues, which may impact a family's level of assistance. EIV contains stand-alone reports, which the YHA may generate at any time i.e.;

- Deceased Tenants Report,
- New Hires Report,
- Multiple Subsidy Report,

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

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

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

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

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

- Deceased Tenants Report
- Identity Verification Report
- Immigration Report

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

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

### **EIV Requirements for Recertification**

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

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

- Discuss the income discrepancy with the tenant

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

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

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

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

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

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

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

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

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

#### YHA Policy

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

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of any notice or grievance period.

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

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

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

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

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

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

### **EIV Record Retention**

#### YHA Policy

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

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

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

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

#### YHA Policy

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

### **Incorrect EIV Information**

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

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

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

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

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

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

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

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

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

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

### **Identity Theft**

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

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

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

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

Equifax Credit Information Services, Inc.

P.O. Box 740241 Atlanta, GA 30374

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

Telephone: (800) 685-1111

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Experian

P.O. Box 2104 Allen, TX 75013

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

Telephone (888) 397-3742

TransUnion

P.O. Box 6790 Fullerton, CA 92834

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

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

### **Security of EIV Data**

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

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

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

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

#### **Independent Auditors:**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### YHA Policy

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

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

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

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

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

#### YHA Policy

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

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

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

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

#### YHA Policy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **YHA Policy**

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

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

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

#### **YHA Policy**

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

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

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

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

**Using Review of Documents as Verification**

YHA Policy

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

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

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

YHA Policy

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

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

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

**PART II. VERIFYING FAMILY INFORMATION**

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

YHA Policy

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

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

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

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

Legal identity will be verified on an as needed basis.

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

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

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

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

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

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

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

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

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

### **Rejection of Documentation:**

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

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

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

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

The YHA shall verify each disclosed SSN by:

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

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

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

YHA Policy

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

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

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

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

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

YHA Policy

If an official record of birth, the YHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and/or to provide a self-certification.

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

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

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

YHA Policy

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

**Marriage**

YHA Policy

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

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

### **Separation or Divorce**

#### YHA Policy

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

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

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

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

### **Absence of Adult Member**

#### YHA Policy

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

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

#### YHA Policy

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

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

#### YHA Policy

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

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

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

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

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

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

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

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

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

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

#### **YHA Policy**

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

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

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

#### **YHA Policy**

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

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

### **Overview**

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

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

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

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

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

### **YHA Policy**

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

### **Eligible Immigrants**

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

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

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

### **YHA Verification**

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

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

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

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

Any preferences must be properly verified.

**PART III. VERIFYING INCOME AND ASSETS**

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

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

YHA Policy

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

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

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

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

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

YHA Policy

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

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

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

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

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

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

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

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

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

##### **YHA Policy**

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

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

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

##### **YHA Policy**

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

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

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

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

Third-party verification from the person paying the support

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

Copy of the latest check and/or payment stubs

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

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

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

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

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

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

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

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

#### **YHA Policy**

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

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

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

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

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

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

#### **YHA Policy**

The family must provide:

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

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

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

#### **YHA Policy**

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

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

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

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

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

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

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

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

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

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

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

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

YHA is required to:

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

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

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

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

YHA Policy

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

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

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

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

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

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

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

YHA Policy

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

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

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

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

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

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

**YHA Policy**

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

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

**PART IV. VERIFYING MANDATORY DEDUCTIONS**

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

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

**Dependent Deduction**

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

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

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

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

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

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

#### **Amount of Expense**

##### YHA Policy

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

Medical expenses will be verified through:

- EIV;
- Third-party verification form signed by the provider, when possible;
- If third-party is not possible, copies of cancelled checks used to make medical expense payments and/or printouts or receipts from the source will be used. In this case the YHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The YHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months;
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, the YHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

#### **Eligible Household**

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62, or a person with disabilities. The YHA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility Chapter.

#### **Qualified Expenses**

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 for the YHA's policy on what counts as a medical expense.

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### **Unreimbursed Expenses**

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

#### YHA Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

### **Expenses Incurred in Past Years**

#### YHA Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, the YHA will verify:

- The anticipated repayment schedule;
- The amounts paid in the past, and
- Whether the amounts to be repaid have been deducted from the family's annual income in past years.

### **7-III.C. DISABILITY ASSISTANCE EXPENSES**

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

#### **Amount of Expense**

##### *Attendant Care*

#### YHA Policy

The YHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

- Third-party verification form signed by the provider, when possible;
- If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source;
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

##### *Auxiliary Apparatus*

#### YHA Policy

Expenses for auxiliary apparatus will be verified through:

- Third-party verification of anticipated purchase costs of auxiliary apparatus;

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- If third-party is not possible, billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months;
  - If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, the YHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described above).
- The expense permits a family member, or members, to work.
- The expense is not reimbursed from another source.
- The expense does not exceed the amount of the earned income of the individual freed for work.

### **Family Member is a Person with Disabilities**

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The YHA will verify that the expense is incurred for a person with disabilities.

### **Family Member(s) Permitted to Work**

The YHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

### YHA Policy

The YHA will seek third-party verification from a Rehabilitation Agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.).

If third-party and document review verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

### **Unreimbursed Expenses**

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

### YHA Policy

An attendant care provider will be asked to certify that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

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**7-III.D. CHILD CARE EXPENSES**

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, the YHA must verify that:

- The child is eligible for care.
- The costs claimed are not reimbursed.
- The costs enable a family member to pursue an eligible activity.
- The costs are for an allowable type of child care.
- The costs are reasonable if seeking employment or furthering education.

**Eligible Child**

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. The YHA will verify that the child being cared for (including foster children) is under the age of 13.

**Unreimbursed Expense**

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

YHA Policy

The child care provider will be asked to certify that, to the best of the provider's knowledge, the child care expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

**Pursuing an Eligible Activity**

The YHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

YHA Policy

*Information to be Gathered*

The YHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

*Seeking Work*

Whenever possible the YHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the YHA will request verification from the agency of the member's job seeking efforts to

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date and require the family to submit to the YHA any reports provided to the other agency.

In the event third-party verification is not available, the YHA will provide the family with a form on which the family member must record job search efforts. The YHA will review this information at each subsequent reexamination for which this deduction is claimed.

*Furthering Education*

The YHA will ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered.

*Gainful Employment*

The YHA will seek verification from the employer of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified.

**Allowable Type of Child Care**

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

YHA Policy

The YHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6.

The YHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The YHA will verify the child care provider is not a family member residing in the household. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

**Reasonableness of Expenses**

Only reasonable child care costs can be deducted for seeking employment or furthering education.

YHA Policy

The actual costs the family incurs will be compared with the YHA's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable. YHA will use local welfare agency guidelines.

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If the family presents a justification for costs that exceed typical costs in the area, the YHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

The YHA shall use the local HHS determinations as the limit on what is reasonable for the area.

**Additional Provisions for Verification if Child Care Provided by Non-Agency Provider**

In cases where verification is provided through non-agency providers through an self-affidavits, and if the child care deduction exceeds \$600, the YHA will require the participant/tenant to provide verification of the 1099-Misc provided to the individual providing the care, and a copy of the provider's tax return indicating the income was properly documented for taxing purposes.

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## Chapter 8

### HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subpart I and 24 CFR 982.507]

#### INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits the YHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and YHA established requirements. HQS inspections are required before the Housing Assistance Payments (HAP) Contract is signed and at least annually during the term of the contract.

All units must pass an HQS inspection prior to the approval of a lease and at least once every 24 months during the term of the contract, and at other times as needed, to determine that the unit meets HQS. Effective July 1, 2014, YHA may establish a policy for performing unit inspections biennially rather than annually. This policy could apply to some or all assisted units. YHA still has the option to inspect every unit annually. See Section 8-II.G for further details.

HUD also requires YHA to determine that units rented by families assisted under the HCV program have rents that are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and YHA requirements related to housing quality and rent reasonableness as follows:

Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part II. The Inspection Process. This part describes the types of inspections the YHA will make and the steps that will be taken when units do not meet HQS.

Part III. Rent Reasonableness Determinations. This part discusses the policies the YHA will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

#### PART I: PHYSICAL STANDARDS

##### 8.I.A. GENERAL HUD REQUIREMENTS

###### HUD Performance and Acceptability Standards

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

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- Sanitary facilities
  - Food preparation and refuse disposal
  - Space and Security
  - Thermal Environment
  - Illumination and electricity
  - Structure and materials
  - Interior Air Quality
  - Water Supply
  - Lead-based paint
  - Access
  - Site and neighborhood
  - Sanitary condition
  - Smoke Detectors

A summary of HUD performance criteria is provided in Attachment 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 and Inspection Checklist, form HUD-52580-A or Handheld Units;
- HUD PIH Notice 2010-26, Non-discrimination and Accessibility for Persons with Disabilities; and
- HUD Notice 2003-31, HUD Notice 2006-13, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

### **Tenant Preference Items**

HUD requires the YHA to enforce minimum HQS but also requires that certain judgments about acceptability be left to the family. For example, the YHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic condition of the facilities is acceptable. Attachment 8-2 summarizes those items that are considered tenant preferences.

### **Modifications to Provide Accessibility**

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore

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the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained. [24 CFR 100.203; Notice 2003-31, PIH 2006-13].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

#### YHA Policy

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the YHA for review.

### **8.I.B. ADDITIONAL LOCAL REQUIREMENTS**

The YHA may impose additional quality standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choice. HUD approval is required if more stringent standards are imposed. HUD approval is not required if the YHA additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

#### **These additional requirements are approved by the HA Board of Commissioners:**

1. All mobile homes must be underpinned.
2. The YHA may fail unsanitary units where food, garbage, excrement, etc. exists to a degree where health can be damaged. They may also fail units where papers, clothes and trash are piled high and cause fire/health hazard. These will be considered tenant violations. In cases where a unit is determined to be roach free when tenant moves in, the appearance of roaches subsequently may be the responsibility of the tenant if they are the cause of the infestation. They will be held responsible for exterminating the unit. This does not prohibit the tenant and owner from working out their own solution to this problem, however.
3. All units must have a means of heat provided by the Owner. If the tenant desires to use their own heater, the tenant must state in writing that they are using their own heater by choice. The owner is then responsible for having the chimney checked and verified to be working properly. If an owner provides an adequate means of heat and the tenant prefers to use their own, the tenant is responsible for the heater connection and verifying the chimney to be adequate and safe. This does not prohibit the tenant and owner from working out their own solution to the matter (in agreement to both).
4. All motor vehicles on the premises must have current state registration, inspection sticker or license plate. Vehicles must be operable and not parked upon the lawn, sidewalk, or other areas not designated for parking. No abandoned or derelict vehicles

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5. All units must have a screen on at least one window located in all rooms used for family living unless they are closed off and not used.

### **Thermal Environment [HCV GB p.10-7]**

The YHA must define a “healthy living environment” for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

#### YHA Policy

The heating system must be capable of maintaining an interior temperature of 68 degrees Fahrenheit between October 1 and April 30, and all heating systems will be inspected and operated between these dates. From May 1 through September 30, the heating system will be inspected, but may not necessarily be operated, due to outside and inside temperatures. In those cases where the heating system is run by a boiler (normally October through May), they will not be operated if shut down. Also, central HVAC systems that include an AC chiller unit will not be operated in the “heat” mode if outside air temperatures are above 70 degrees Fahrenheit (to avoid damage to the system). Other heating systems that are single source such as gas, kerosene, oil, wood or pellet stoves and others will be inspected

### **Clarifications of HUD Requirements**

#### YHA Policy

As permitted by HUD, the YHA has adopted the following specific requirements that elaborate on HUD standards.

#### ***Walls***

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

Areas which fall under the minimum lead base requirement, must secure the area of peeling paint, paint area with at least one coat of lead free paint and sign a “self-declaration” certifying it is properly lead-base paint abated.

Areas that have holes must be filled and finished

#### ***Windows***

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Window screens must be in good condition (applies only if screens are present).

Units without central heating and air conditioning must have a screen on each window per room.

Units with central heating and air conditioning must have a screen on at least one window of each room. Screens must be in good condition with no holes or tears.

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If screens have been on the window and are missing at inspection, they must be replaced.

All windows six (6) feet from ground level and under, (1<sup>st</sup> floor) must have locks.

All windows must be free of cracks that exceed two (2) inches or broken panes.

All windows must open, close and lock properly if designed to.

All windows in a sleeping area or bedroom must be free of permanently attached security bars without a quick release located inside the unit.

### ***Doors***

All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold.

All interior doors must have no holes that penetrate through both sides, have all trim intact, and be openable without the use of a key.

All entry doors and rear exit doors must be sturdy (no interior type) and must have at least one keyed entry door so they can be locked from the outside.

### ***Floors***

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be secured and made level. If they cannot be leveled, they must be replaced.

All floors must be free of tears, missing tiles, torn linoleum or tripping hazards.

All carpet must be in good repair, with no major stains.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of baseboard, trim, or sealing for a "finished look." Vinyl baseboard is permitted.

### ***Sinks***

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly, if installed.

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***Security***

Owners and/or tenants are responsible for providing and replacing old batteries for battery powered smoke detector units. Tenant will be instructed not to tamper with smoke detectors or remove batteries. If battery is weak in the smoke or CO detector, the inspector may replace with a new batter. If smoke detector or carbon monoxide detector is found to be defective at the time of inspection, this will need to be corrected within twenty four (24) hours or the contract will be terminated.

All families with hearing impaired members must have a smoke detector installed by the owner with flashing lights in the bedroom or sleeping area. If the unit has a source of carbon monoxide (CO), a hearing impaired detector with flashing lights must be installed. A combination smoke/CO detector with flashing lights may be installed outside of the bedroom as long as a hearing impaired smoke detector is installed in the bedroom or sleeping area.

All units above the ground level, without emergency exits other than a window which is eight (8) feet above the ground must have a ladder or rope ladder. If the unit has a balcony, the ladder or rope ladder is not required but the Housing Department highly recommends having either a ladder or rope ladder for safety

If window security bars or security screens are present on emergency exit windows in a bedroom or sleeping area (studio apartment), they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

A simple “bolt lock” on exterior doors may be used along with a regular key lock. **Double cylinder deadbolt locks are NOT allowed.**

***Water Heater***

The water heater must have a temperature / pressure relief valve (TPR), with an attached discharge tube which must extend to within 6 inches of the floor, or exit the interior of the building. If the water heater is of a newer design such as tankless or “instant on”, which *does not* require a TPR valve, then a discharge tube will not be required. The temperature range must be within 105-125 degrees Fahrenheit for sanitation and safety purposes. In an “adult only” household, temperature may be higher, but *never* more than 135 degrees Fahrenheit. All electrical or gas connections or vent pipe connection must be correct and secure.

***Refrigerator***

A correctly operating refrigerator must have an interior temperature range of 35-50 degrees Fahrenheit. If the temperature is over 50 degrees with the thermostat set on maximum cold, the refrigerator will fail for health reasons. The freezer compartment must be 32 degrees Fahrenheit or less.

***Carbon Monoxide Detector***

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If a carbon monoxide detector is required by state or local regulations, it must be correctly installed and operational.

***Bedrooms***

Each room used for sleeping must have two (2) exits (one being the entrée door). Minimum bedroom ceiling height is seven (7) feet. Sloping ceiling may not slope to lower than five (5) feet on one side of the room.

***Room Standards***

All rooms in unit must meet HQS standards such as utility rooms, attached shed, closed in porch, basement and garage.

***Mobile Homes***

Must have tie downs or anchors and be skirted

***Building Exterior***

All stairs with four (4) or more steps must have at least one handrail.

Building exterior must be kept safe, decent and sanitary.

***Other Conditions***

The YHA may fail unsanitary units where food, garbage, excrement, filth, etc. exists to a degree where health can be damaged.

The YHA may fail units where papers, clothes and trash are piled high and may be cause for fire/health hazard.

**The YHA has Adopted Local Requirements of Acceptability in Addition to Those Mandated by HUD Regulations:**

- All holes in walls and doors that exceed 8.5 inches by 11 inches are to be patched with the exception of exterior walls that allow weather into the unit. Small holes or minor nail holes are excluded.
- All appliances provide by an owner must be kept in safe and working condition.
- Any appliances that are present in a unit must be in working order.
- If cabinets are designed to have drawers and doors, all must be operational and open and shut securely (tenant preference).
- All doors designed with knobs should have all knobs present and in working condition and open and shut securely

- All closets designed with doors should have all knobs present and in working condition. If closet is designed to have a door, it must have a door installed.
- All sliding glass doors must have proper rollers so that they are easy to work.
- All plumbing fixtures must be free from drips and leaks
- All severely chipped or rusted sinks must be patched, repaired, or replaced.
- All light fixtures that are made to have a globe within 3 feet of water (tub/shower area or bathroom or kitchen sink), must have one installed.
- All holes in the yard area that could be a tripping factor must be leveled. Grass must be manageable and in compliance with local code requirements.
- Smoke detectors and Carbon Monoxide detectors must be present in all units according code requirements.
- Units must be clearly identified with house or apartment numbers.
- If windows are meant to be operable, they cannot be nailed shut or made inoperable.
- Items other than outside furniture cannot be stored outside on porches, patios or in other outside areas.
- All rooms used for sleeping must have two (2) exits which are not blocked by furniture or other obstructions.
- All outside sheds must be in good condition with no broken windows and/or no other safety hazards.
- If a door screen is present, it must not have any tears and/or holes

### **Special HQS Requirements of YHA for Electrical Receptacles (PIH 2010-8)**

The HCV program regulations at 24 CFR 982.401(f) set forth the HQS requirements and acceptability criteria with respect to illumination and electricity for the housing unit. The regulations state that a unit must include the following acceptability criteria for electricity.

- the kitchen and bathroom must have one permanent ceiling or wall light fixture in proper operating condition;
- the kitchen must have at least one electrical outlet in proper operating condition; and

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- the living room and each bedroom must have at least two electrical outlets in proper operating condition (permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets).

The inspector is responsible for determining whether the outlets are in “proper operating condition.” While the regulation does not define what the Department considers “proper operating condition,” HUD-Form 52580A cites examples of electrical hazards including:

- broken wiring;
- non-insulated wiring;
- frayed wiring;
- improper types of wiring, connections or insulation;
- wires lying in or located near standing water or other unsafe places;
- light fixture hanging from electric wiring without other firm support or fixture;
- missing cover plates on switches or outlets;
- badly cracked outlets;
- exposed fuse box connections; and
- overloaded circuits evidenced by frequently “blown” fuses (which the inspector determines by asking the tenant).

### **Types of Outlets and Their Proper Operating Condition**

In response to an OIG audit, HUD is issuing this Notice to clarify the proper operating condition of electrical outlets (110V/120V). There are two basic types of outlets: two-pronged (also called “two-slotted”) and three-pronged outlets. Three-pronged outlets have an additional hole for a ground wire, and are “grounded outlets.” Two-pronged outlets are “ungrounded.”

Generally, original two-pronged, ungrounded outlets and original three-pronged, grounded outlets are acceptable under the HQS. “Upgraded” outlets, which have been changed from two-pronged to three-pronged, are the major area of concern in this Notice.

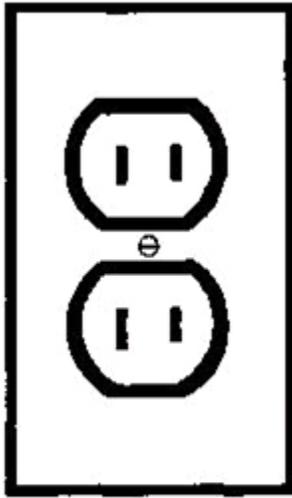


FIGURE 1 UNGROUNDED

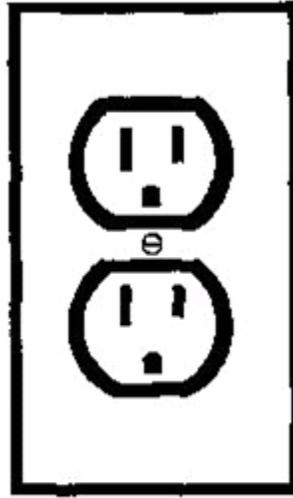


FIGURE 2 GROUNDED

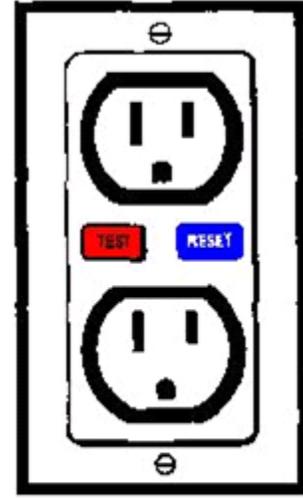


FIGURE 3 GFCI

### Ungrounded Outlets

Older construction (pre-1975) housing will usually have ungrounded two-pronged outlets, which is an acceptable type of outlet under the HQS. (Figure 1) Homes constructed with a two-wire electrical system include only a hot and neutral wire. Two-pronged ungrounded systems and outlets are acceptable under HQS as long as the outlet is in proper operating condition. An owner does not need to upgrade the electrical system of the unit (convert two-pronged outlets to three-pronged) in order for the unit to pass an HQS inspection.

### Grounded Outlets

Newer construction housing will usually have three-pronged outlets, which are acceptable under HQS if the outlets are grounded. (Figure 2) Newer units constructed with a three-wire electrical system include a hot, neutral, and ground wire. This Notice outlines traditional methods of testing grounded outlets for proper operating condition below.

### “Upgraded” Outlets

Many of the cords for today’s appliances contain three-pronged plugs, which can cause problems when an older home does not have three-pronged outlets for these grounded plugs. In the case of older homes, owners often replace two-pronged, ungrounded outlets with three-pronged, grounded type outlets in order to establish appropriate outlets for appliances that have cords with three-pronged plugs. However, in some cases, owners may replace two-pronged, ungrounded outlets with the three-pronged, grounded type outlets without the necessary rewiring that adds a ground wire to the newly installed, grounded type outlet.

Three-pronged, grounded type outlets should not be substituted for ungrounded outlets unless (1) a ground wire is connected to the outlet, or (2) a Ground Fault Circuit Interrupter (GFCI)

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protects the outlet. (Figure 3) Installing a new ground wire may require a licensed electrician to install a new wire to the circuit breaker box and may be prohibitively expensive. A more cost-effective method is to protect the outlet with a GFCI, which provides protection to the outlet. If the GFCI senses a difference in current flow between the hot and the neutral terminals, it shuts off the flow of current to the outlet.

An older construction house with a grounded outlet (Figure 2) would be an indication that the unit may have undergone some upgrading. In such cases, the Department recommends testing a sample of outlets in the unit to determine if three-pronged outlets are in proper operating condition, in addition to verifying the proper operating condition of the required number of outlets per room.

### **Testing of Outlets to Determine Proper Operating Condition**

#### **Two-pronged, Ungrounded Outlets**

The traditional method of testing a two-pronged, ungrounded outlet is to plug an appliance into the outlet and verify that the appliance turns on. This simple method is acceptable for determining that the ungrounded outlet is in proper operating condition and meets HQS.

#### **Three-pronged Outlets**

A three-pronged outlet must meet one of the following three standards for the inspector to consider the outlet in “proper operating condition” as required by HQS:

1. The outlet is properly grounded.
2. A GFCI protects the three-pronged, ungrounded outlet.
3. The outlet complies with the applicable state or local building or inspection code.

The inspector needs to use an outlet tester to determine whether the outlet is properly grounded. There are two types of outlet testers that an inspector can use to determine a properly grounded outlet: a two-wire tester or a three-pronged tester.

**Two Wire Tester**



**Three Prong Tester**



To test an outlet with a two-wire tester, an inspector inserts one probe into the hot slot (usually, the smaller slot) of the outlet and one probe into the ground hole (bottom hole). If the outlet is properly grounded, the indicator light should light brightly in the same manner

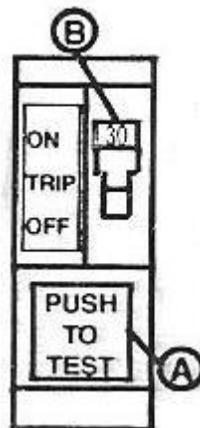
that the light shines when the inspector inserts the probes of the tester into the hot and neutral (right and left) slots.

To test an outlet with a three-pronged tester, the inspector should plug the device in and note the pattern of the lights. Usually there will be a legend printed on the device describing what the lights indicate. The instructions provided by the manufacturer of the tester should be followed.

If the inspector determines that the outlet is not properly grounded based on the results of the outlet tester, he/she may need to conduct some additional investigation to determine if a GFCI protects the outlet. A GFCI can be located at the outlet that is being tested or upstream on the circuit of the outlet. If the GFCI is at an outlet, it will look similar to Figure 3 above, and the inspector should accept the outlet as GFCI-protected after testing the functionality of the GFCI as indicated below.

As stated above, an ungrounded outlet may be protected by a GFCI at another outlet that is upstream from the ungrounded outlet. If the inspector suspects that this may be the case, there is an easy way to determine if the GFCI protects an outlet. The inspector should “trip” all of the GFCIs in the unit; both at the outlet and in the circuit breaker box and determine if there is power to the ungrounded outlet. If the power to the outlet is off, then one of the GFCIs protects the outlet.

Occasionally, a GFCI may be located on the circuit breaker at the load center (circuit breaker box). The following image depicts a GFCI breaker: the distinctive indicator is the “Test” button mounted on the breaker. An inspector may want to “trip” the GFCI in order to identify that the power shuts off to any ungrounded outlet that is protected by the breaker. To “trip” the GFCI, the inspector would press the test button (A) and the switch (B) will move and shut off power to the circuit. This allows the inspector to verify that the outlet is GFCI- protected.



GFCI Breaker

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## Testing of Ground Fault Circuit Interrupters (GFCIs) To Determine Proper

### Operating Condition

If an outlet contains a GFCI, the GFCI must work as designed in order for the inspector to consider the GFCI in proper operating condition. However, a GFCI can be in proper operating condition even if it is not grounded. A GFCI is in proper operating condition if pressing the “TEST” button on the GFCI trips the circuit and shuts off power through the receptacle. It is important to note that some three-prong testers have a GFCI test button function built into the tester. The test button on a three-prong tester only works to trip a grounded GFCI. Therefore, if the GFCI is not grounded, the circuit tester will erroneously indicate that the GFCI is malfunctioning. As a result, inspectors cannot depend solely on three-prong testers to determine if a GFCI is in proper operating condition. Instead, the inspector should press the “TEST” button, and if the button trips the circuit and shuts off the power through the receptacle, the GFCI is in proper operating condition.

### 8.I.C. LIFE THREATENING CONDITIONS [24 CFR 982.404(a)]

HUD requires the YHA to define life threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life-threatening conditions within 24 hours of YHA notification.

#### YHA Policy

The following are considered life-threatening conditions:

- Any condition that jeopardizes the security of the unit
- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling
- Natural or LP gas or fuel oil leaks
- Any electrical problem or condition that could result in shock or fire
- Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit.
- Utilities not in service, including no running hot water
- Conditions that present the imminent possibility of injury
- Obstacles that prevent safe entrance or exit from the unit
- Absence of a functioning toilet in the unit
- Inoperable smoke detectors
- No hot or cold water

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If an owner fails to correct life-threatening conditions as required by the YHA, the housing assistance payment will be abated and the HAP contract will be terminated. See 8-II-G.

If a family fails to correct a family caused life-threatening condition as required by the YHA, the YHA may terminate the family's assistance. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless the YHA determines the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

### **8-I.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]**

#### **Family Responsibilities**

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain family-supplied appliances
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. "Normal wear and tear" is defined as items that could not be charged against the tenant's security deposit under state law or court practice.

The YHA may proceed with termination of assistance, regardless as to whether the owner is enforcing the provisions of the lease for violations.

#### **Owner Responsibilities**

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

### **8-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225]**

If a YHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, the YHA must complete a risk assessment of the dwelling unit. The risk assessment must be completed in accordance with program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the risk assessment report from the YHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and

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35.1330]. If the owner does not complete the “hazard reduction” as required, the dwelling unit is in violation of HQS and the YHA will take action in accordance with Section 8-II.G.

YHA reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

### **8-I-F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403]**

If the YHA determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, the YHA must issue the family a new voucher, and the family and YHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the YHA must terminate the HAP contract in accordance with its terms.

#### **YHA Policy**

A unit meets HQS space standard if the dwelling unit has at least one bedroom or living/sleeping room for each two persons. A living/sleeping room is considered space that is not a kitchen or a bathroom.

## **PART II: THE INSPECTION PROCESS**

### **8-II.A. OVERVIEW [24 CFR 982.405]**

#### **Types of Inspections**

The YHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* The YHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP Contract.
- *Annual/Biennial Inspections.* HUD requires the YHA to inspect each unit under lease at least annually/biennially to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be re-inspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors.

#### **Inspection of YHA-owned Units [24 CFR 982.352(b)]**

If the YHA owns units in the HCV Program, the YHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a YHA-owned unit. A YHA-owned unit is defined as a unit that is owned by the

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YHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the YHA). The independent agency must communicate the results of each inspection to the family and the YHA. The independent agency must be approved by HUD, and may be the unit of general local government for the YHA jurisdiction (unless the YHA is itself the unit of general local government or an agency of such government).

### **Inspection Costs**

The YHA may not charge the family for an initial inspection or reinspection of the unit. The YHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. The YHA may establish a reasonable fee to owners for a reinspection if an owner notifies the YHA that a repair has been made or the allotted time for repairs has elapsed and a reinspection reveals that any deficiency cited in the previous inspection that the owner is responsible for repairing was not corrected. The owner may not pass this fee along to the family. Fees collected under this paragraph will be included in a PHA's administrative fee reserve and may be used only for activities related to the provision of Section 8 Tenant-Based Rental Assistance.

In the case of inspections of YHA-owned units, the YHA may compensate the independent agency from ongoing administrative fee for inspections performed. The YHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

### **Notice and Scheduling**

The family must allow the YHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

#### YHA Policy

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life-threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 8:00 a.m. and 5:00 p.m. Generally, inspections will be conducted on business days only. In the case of a life-threatening emergency, the YHA will give as much notice as possible, given the nature of the emergency.

### **Attendance at inspections by owner and family.**

HUD permits the YHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

#### YHA Policy

When a family occupies the unit at the time of inspection, an adult family member must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, the YHA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted, but is not required.

## **8-II.B. INITIAL HQS INSPECTION [24 CFR 982.401(a)]**

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### **Timing of Initial Inspections**

HUD requires the unit to pass HQS before the effective date of the lease and HAP Contract. HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RFTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

#### YHA Policy

The YHA will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 business days of submission of the Request for Tenancy Approval (RFTA).

### **Inspection Results and Re-inspections**

#### YHA Policy

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the YHA for good cause. The YHA will re-inspect the unit within 10 business days of the date the owner notifies the YHA the required corrections have been made.

If the time period for correcting the deficiencies (or any YHA-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, the YHA will notify the owner and the family the unit has been rejected and the family must search for another unit. The YHA may agree to conduct a second re-inspection, for good cause, at the request of the family and owner.

Following a failed re-inspection, the family may submit a new Request for Tenancy Approval for the unit if the family has not found another unit by the time the owner completes all repairs and the family continues to wish to live in the unit.

### **Utilities**

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

#### YHA Policy

All utilities must be on to make a full and accurate inspection of the unit.

If utility service is not available for testing at the time of the initial inspection, the YHA will allow the utilities to be placed in service after the unit has met all other HQS requirements. The YHA will re-inspect the unit to confirm that utilities are operational before the HAP contract is executed by the YHA.

### **Appliances**

#### YHA Policy

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If the family is responsible for supplying the stove and/or refrigerator, the YHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before the HAP contract is executed by the YHA. The YHA will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection may be scheduled within 30 days of HAP contract approval.

### **8.II.C. ANNUAL/BIENNIAL HQS INSPECTIONS [24 CFR 982.405(a)]**

#### **Scheduling the Inspection**

Each unit under HAP contract must have an annual/biennial inspection no more than 24 months after the most recent inspection. The YHA may use the biennial inspection an alternative forms of inspection as allowed by HUD.

The YHA may accept the results of inspections performed by HUD or for other housing programs such as the LIHTC.

#### YHA Policy

The family is notified that it is a family obligation to allow the Housing Department to inspect the unit at reasonable times with reasonable notice (24 CFR 982.51(d)). Inspections will be conducted on business days only. Reasonable hours to conduct an inspection are between 8:00 A.M. and 4:00 P.M. Families are given a four-hour window of time for when an inspection will be scheduled. The landlord does not need to be present for the inspection and may designate a representative, including the tenant, as long as the individual is 18 years of age or older. No more than two inspections will be conducted unless there is verifiable cause for an extension or reasonable accommodation. If a unit fails the second inspection, no additional inspections will be conducted. Landlords and tenants are responsible for providing access as scheduled. In unit fails for safety issues, the repairs must be completed within twenty four hours (24) hours. If all repairs are not completed with thirty (30) days or before the renewal date of contract, no payment will be made. Rent will be prorated on the date the unit passes inspection. If after the 15<sup>th</sup> of the month, rent will not be paid until the first of the following month.

If an adult family member cannot be present on the scheduled date, the family should request that the YHA reschedule the inspection. The YHA and family will agree on a new inspection date that generally should take place within 10 business days of the originally scheduled date. The YHA may schedule an inspection more than 10 business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, the YHA will automatically schedule a second inspection. If the family misses two scheduled inspections without YHA approval, the YHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

If the family is unable to be present but authorizes on adult representative, in writing, to be present, and the adult presents valid photo ID, the inspection will be conducted.

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### **YHA Implementation of Biennial Inspections in lieu of Annual Inspections**

YHA may immediately explore the opportunity as of July 1, 2014 and streamlining process to review the biennial inspection for any unit under HAP contract where the YHA has conducted an HQS inspection within the 12 months preceding July 1, 2014. If YHA has conducted an HQS inspection in that time period, the YHA will not be required to re-inspect until the lapse of 24 months following their last inspection. In making that determination of inspecting the unit every two years- YHA will use a factor that the unit has passed two consecutive initial and/or annual inspection without the need for a re-inspection. If the most recent inspection occurred prior to the 12 months preceding the effective date of this notice, then the YHA is required to conduct an annual HQS inspection for that unit and is afforded no relief from that annual inspection responsibility as a result of the change in the law. However, once that unit has been inspected, the YHA will then have the option to wait up until two years before the next inspection is required.

As of July 1, 2014, the notice does not require the YHA to wait two years from the last inspection before conducting an inspection. If the YHA desires to make inspections on a more frequent basis, it may do so.

The HUD's Section 8 Management Assessment Program (SEMAP) evaluates PHAs on the frequency with which they conduct inspections. HUD will score PHAs based on their compliance with the statutory requirement that they conduct inspections at least biennially.

### **Alternative Inspections for the Biennial Inspection**

The YHA may comply with the biennial inspection requirement through reliance upon an inspection conducted for another housing assistance program. If the YHA relies on an alternative inspection to fulfill the biennial inspection requirement for a particular unit, then the YHA must identify the alternative standard in its administrative plan. Such a change is not considered a significant amendment to the PHA Plan, however, the YHA will include provisions in the following PHA Plan.

Compliance with the biennial inspection requirement may be met by reliance upon an inspection of housing assisted under the housing financed via the Treasury Department's Low-Income Housing Tax Credit program (LIHTC), taking into account the standards employed by those programs. The YHA will use these standards by relying upon an inspection performed by HUD, for example an inspection performed by HUD's Real Estate Assessment Center. YHA is permitted to rely upon inspections conducted for the LIHTC program or performed by HUD with no action other than amending its administrative plan.

In order for an inspection to qualify as an "alternative inspection method," a property inspected pursuant to such method must "meet the standards or requirements regarding housing quality or safety" applicable to properties assisted under the program that employs the alternative inspection method (e.g., LIHTC). For purposes of this notice, HUD is implementing this statutory element as follows:

- If a property is inspected under an alternative inspection method, and the property receives a "pass" score, then the YHA may rely on that inspection to demonstrate compliance with the biennial inspection requirement.

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- If a property is inspected under an alternative inspection method, and the property receives a "fail" score, then the YHA may not rely on that inspection to demonstrate compliance with the biennial inspection requirement.
  - If a property is inspected under an alternative inspection method that does not employ a pass/fail determination--for example, in the case of the LIHTC program, where deficiencies are simply noted--then the YHA must review the list of deficiencies to determine whether any cited deficiency would have resulted in a "fail" score under HQS.
  - If no such deficiency exists, then the YHA may rely on the inspection to demonstrate compliance with the biennial inspection requirements; if such a deficiency does exist, then the YHA may not rely on the inspection to demonstrate such compliance.

Under any circumstance described above in which a YHA is prohibited from relying on an alternative inspection methodology, the YHA must conduct an HQS inspection of any units in the property occupied by voucher program participants and follow HQS procedures to remedy any noted deficiencies. The HQS inspection must take place within a reasonable period of time. HUD will solicit input through rulemaking on circumstances under which a YHA could rely upon corrective actions taken under an alternative inspection method to assure that the property is brought into compliance with the standards or requirements regarding housing quality or safety applicable to the alternative inspection method.

As with all other inspection reports, and as required by 24 CFR 982.158(f)(4), reports for inspections conducted pursuant to an alternative inspection method must be retained for at least three years.

### **Interim Inspections for Biennial Inspection Protocol**

If a family or government official reports a condition that is life-threatening (i.e., the YHA would require the owner to make the repair within no more than 24 hours in accordance with 24 CFR 982.404(a)(3)), then the YHA must inspect the housing unit within 24 hours of when the YHA received the notification. If the reported condition is not life-threatening (i.e., the YHA would require the owner to make the repair within no more than 30 calendar days), then the YHA must inspect the unit within 15 days of when the YHA received the notification. In the event of extraordinary circumstances, such as if a unit is within a Presidentially declared disaster area, HUD may waive the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

### **Mixed-Finance Properties for the Biennial Inspection Protocol**

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Section 220 and the streamlining process gives HUD the authority to alter the frequency of inspections for mixed-finance properties assisted with project-based vouchers to facilitate the use of an alternative inspection method. A unit under HAP contract must be re-inspected at least biennially, through either the regular inspection process or the alternative inspection method.

#### **8-II.D. SPECIAL INSPECTIONS [HCV GB p. 10-30]**

The YHA will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit.

##### YHA Policy

During a special inspection, the YHA generally will inspect only those deficiencies that were reported. However, the inspector will record any additional HQS deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the annual inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the YHA may elect to conduct a full annual inspection.

#### **8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b), HCV GB p. 10-32]**

HUD requires a YHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The Inspection Supervisor will conduct the quality control inspections by randomly selecting units that have been inspected within the previous three months. The selection will be from inspections performed as annual, special, and initial. The quality control inspections will include inspections from all YHA inspectors and also include a cross section of neighborhoods.

The unit sample must include only units that have been inspected within the preceding 2 months.

Quality control inspections will be logged in a manner that is reviewable and retained for SEMAP confirmation. Any deficiencies noted during the inspection process will be corrected.

#### **8.II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT**

##### **Notification of Corrective Actions**

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, the YHA will determine (1) whether or not the failure is a life threatening condition and (2) whether the family or owner is responsible.

##### YHA Policy

When life-threatening conditions are identified, the YHA will immediately notify both parties by telephone, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the YHA's notice.

When failures that are not life threatening are identified, the YHA will send the owner and the family a written notification of the inspection results within 5 business days of

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the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. No more than 30 days will be allowed for the correction unless the supervisor and inspector determines to allow an extension for good cause. This excludes Initial and Project Based inspections, which must be re-inspected by the YHA to pass.

The notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life threatening conditions are not corrected within the specified time frame (or any YHA-approved extension), the owner's HAP will be abated in accordance with YHA policy (see 8-II.G.). Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any YHA-approved extension, if applicable) the family's assistance will be terminated in accordance with YHA policy (see Chapter 12).

### **Extensions**

For conditions that are life-threatening, the YHA cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, the YHA may grant an exception to the required time frames for correcting the violation, if the YHA determines that an extension is appropriate [24 CFR 982.404].

#### YHA Policy

Extensions will be granted in cases where the YHA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

A repair cannot be completed because required parts or services are not available.

A repair cannot be completed because of weather conditions.

A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case-by-case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

### **Re-inspections**

#### YHA Policy

The YHA will conduct a re-inspection immediately following the end of the corrective period, or any YHA approved extension.

If the deficiencies have not been corrected by the time of the re-inspection, the YHA will send a notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with YHA policies. If the YHA is unable to gain entry to the unit in order to conduct the scheduled re-inspection, the YHA will consider the family to have violated its obligation to make the unit available for

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inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

### **8.II.G. ENFORCING OWNER COMPLIANCE**

If the owner fails to maintain the dwelling unit in accordance with HQS, the YHA must take prompt and vigorous action to enforce the owner obligations.

#### **HAP Abatement**

If an owner fails to correct HQS deficiencies by the time specified by the YHA, HUD requires the YHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

#### YHA Policy

The YHA will make all HAP abatements effective the first of the month following the expiration of the YHA specified correction period (including any extension).

The YHA will inspect abated units within 5 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction. The landlord is not entitled to any back rent from the YHA for units that have been abated due to a failed HQS.

#### **HAP Contract Termination**

The YHA must decide how long any abatement period will continue before the HAP contract will be terminated. The YHA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. The YHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

#### YHA Policy

The maximum length of time that a HAP may be abated is 90 days. However, if the owner completes corrections and notifies the YHA before the termination date of the HAP contract, the YHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by the YHA is 30 days.

### **8.II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]**

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by the YHA (and any extensions), the YHA will terminate the family's assistance, according to the policies described in Chapter 12.

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If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

### **PART III: RENT REASONABLENESS [24 CFR 982.507]**

#### **8-III.A. OVERVIEW**

Except in the case of certain LIHTC-assisted units, or RAD conversions, no HAP contract can be approved until the YHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

No HAP contract can be approved until the YHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

#### **YHA-owned Units [24 CFR 982.352(b)]**

In cases where an HCV family is receiving assistance in a YHA-owned unit, the YHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A YHA-owned unit is defined as a unit that is owned by the YHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the YHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the YHA. The independent agency must be approved by HUD, and may be the unit of general local government for the YHA jurisdiction (unless the YHA is itself the unit of general local government or an agency of such government).

#### **LIHTC and HOME Assisted Units [24 CFR 982.507(c)]**

For units receiving low-income housing tax credits (LIHTCs), a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the YHA must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the YHA for the unit size involved.

#### **8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED**

##### **Owner-initiated Rent Determinations**

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The YHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. The YHA (or independent agency in the case of YHA-owned units) will assist the family with the negotiations upon request. At initial occupancy the YHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments may be done no more than annually and must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent HQS inspection have been corrected. Rent increases must be requested at least 60 days before the effective date of the increase.

### YHA Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, the YHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. Three comparable units will be used, wherever available, for each new contract executed.

Rent reasonableness is determined by analyzing the local rental market and through contact with owners and property managers of rental property.

The market area for rent reasonableness comparables is broad, but units will be compared on a neighborhood basis wherever possible.

The YHA will maintain a computer list by ZIP Code of reasonable rents currently under contract.

The data for other unassisted units the owner owns will be gathered from Apartment Guide information, newspapers, realtors, professional associations, and inquiries of owners.

The YHA will maintain books or computer records that include comparable data on unassisted units in the market. Staff in making their rent reasonableness determinations will use this data. The books will be updated on an annual basis.

The YHA will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination by the inspector either in writing or orally.

All rents adjustments will be effective the first of the month following 60 days after the YHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

### **YHA- and HUD-Initiated Rent Reasonableness Determinations**

HUD requires the YHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 5 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the YHA to make a determination at any other time. The YHA may decide that a new determination of rent reasonableness is needed at any time.

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YHA Policy

In addition to the instances described above, the YHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the YHA determines that the initial rent reasonableness determination was in error or (2) the YHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

**8-III.C. HOW COMPARABILITY IS ESTABLISHED**

The YHA will determine and document on a case-by-case basis that the approved rent is reasonable in comparison to rent for other comparable unassisted units in the market. This applies to all programs.

The YHA will not approve a lease until the YHA determines that the initial rent to owner is a reasonable rent. The YHA must redetermine the reasonable rent before any increase in the rent to owner, and if there is a five percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect one year before the contract anniversary.

The YHA must redetermine rent reasonableness if directed by HUD and based on a need identified by the YHA's auditing system. The YHA may elect to redetermine rent reasonableness at any other time. At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or redetermined by the YHA

The owner will be advised that by accepting each monthly housing assistance payment s/he will be certifying that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises.

If requested, the owner must give the YHA information on rents charged by the owner for other units in the premises or elsewhere. **The YHA will only request information on the owner's units elsewhere if the YHA has cause to demonstrate that the owner has a tendency to charge higher rents to program participants or if needed for rent reasonableness comparables.**

The data for other unassisted units will be gathered from **newspapers, Internet Realtors, professional associations, inquiries of owners, market surveys, and other available sources.**

The market areas for rent reasonableness are **census tracts and/or neighborhoods** within the YHA's jurisdiction. Subject units within a defined housing market area will be compared to similar units within the same area.

The following items will be used for rent reasonableness documentation:

- Size (number of Bedrooms/square footage)
- Location
- Quality
- Amenities (bathrooms, dishwasher, air conditioning, etc.)
- Housing Services

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Age of unit  
Unit Type  
Maintenance  
Utilities

### **Rent Reasonableness Methodology**

In accordance with the regulations and PIH 2003-12, the voucher program regulation at 24 CFR 982.507 requires the YHA to certify that the rent charged to the housing choice voucher tenant is not more than the rent charged for other unassisted comparable units. Section 982.507(c) states that the owner must give the YHA information requested by the YHA on rents charged by the owner for other units in the premises or elsewhere. The RFTA, Form HUD-52517 was revised to add information from owners of multifamily properties on the rents charged for three (3) recent rentals of comparable unassisted units in the same complex. The owner supplies this information in Section 12a of the revised RFTA. YHA can use the information provided in Section 12a of the form to determine and document rent reasonableness for comparable unassisted units in the same apartment complex.

In determining the reasonableness of rents for units located in a multifamily project that is not substantially assisted, the YHA may base its determination on the rents charged for the three comparable unassisted units identified by the owner on the RFTA. In such cases, the YHA does not have to obtain additional rent comparables in other multifamily housing in the area.

There has been some confusion regarding the interpretation of 24 CFR 982.507(b) of the voucher program regulation. According to Section 982.507(b):

*“Comparability.* The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider: (1) The location, quality, size, unit type, and age of the contract unit; and (2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.”

Previously, YHA was under the impression that they have to routinely consider and justify rent reasonableness individually for each of the nine criteria listed in Section 982.507(b) to “fully comply” with the regulation. HUD realizes that, in the wake of the Section Eight Management Assessment Program (SEMAP) implementation, commercial trainers have stressed the need for PHAs to consider all nine factors stated in the regulation, causing PHAs to expend excessive administrative resources for rent reasonableness determinations. HUD notified YHA (PIH 2003-12) that this was a misconception and to **clarify the misconception. HUD never intended that PHAs must consider each of the nine criteria to determine rent reasonableness of each assisted unit in order to “fully comply” with the regulation.**

The preamble to Subpart K, Rent and Housing Assistance Payment, in the April 30, 1998, Federal Register provides that “determination of rent reasonableness for Section 8 tenant-based

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assistance does not call for a special or unusual valuation in accordance with detailed procedures prescribed by HUD.” The Rule “contains [only] a brief and simple statement of the basic standards to be applied by a PHA in determining rent reasonableness for the Section 8 tenant-based programs.” The Rule acknowledges, “PHAs have extensive experience in determining rent reasonableness” and instructed, “each PHA should use appropriate and practical procedures for determining rental values in the local market.”

In any determination about the reasonableness of rent for a particular unit, a prospective tenant should consider factors such as location, quality, size, type, age, amenities, housing services, maintenance and utilities to be supplied by the owner. Since program inception, the criteria were meant to assist PHAs in developing a common sense approach to valuing a unit. It remains important to note that the Department places a high priority on accurate rent reasonableness determinations and requires that such determinations be performed in a documented, reasonable, and consistent manner. In any determination about the reasonableness of the rent for a particular unit, a renter (and whoever is conducting the comparability determination) implicitly or explicitly considers the nine comparability criteria specified in HUD’s regulations.

It is not, however, necessary or cost-effective to try to quantifiably document or separately evaluate each of these criteria. To the extent possible, rent comparability should be based on rents paid for similar units in the same general location that are also generally similar in terms of the overall quality of housing services provided. Any procedures or documentation used should reflect this approach.

With this in mind and in adherence with HUD requirements, the YHA utilizes a simplified rent reasonableness system that compares similar units and includes and considers the HUD factors listed above. This system on multi-family shall be as outlines in the previous paragraphs. The system on single family or other units that are not part of a multifamily housing complex shall include 2 or 3 comparable units.

Information is gathered on unassisted rental units in the YHA market area, and each unit is rated, using the YHA’s rent reasonableness system. Using an automated method, the average rents are identified for units of like size and type within the same market area. Attempts will be made to localize the unit within a small jurisdiction (under a 5 mile radius). As many defined factors of the items listed above on the unit to be assisted will be compared, to those factors of comparable unassisted units in the database. The average will be adjusted up or down based on the estimated dollar value of the comparable items in comparison with the total database.

#### **Unassisted Units on the Premises (PIH 2009-51)**

In determining that the rent to owner does not exceed the rents charged for comparable unassisted units on the premises, the YHA takes into consideration the rents for those units in the premises that are not assisted under a Federal, State, or local government program.

Units for which the owner has simply decided of his or her own volition to charge rents that are below what other tenants are charged and what the market might actually bear are not assisted units for purposes of rent reasonableness determinations. Rents for these particular units in the premises must be considered in determining if an HVC rent to owner is reasonable.

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In addition, the YHA must take into consideration the real value of the rents charged by the owner for unassisted comparable units in the premises when determining rent reasonableness. For example, if the rent recorded on the lease for comparable unassisted units on the premises is the same as the rent for an HCV family but an owner is reducing the amount that is actually required to be paid by the unassisted tenants, the YHA takes the actual amount into consideration. For example, unassisted tenants might be receiving a credit each month, or a “rent-back”, or free rent some months, or some other type of subsidy from the owner. All of these actions reduce the true value of the charged rent, and the YHA must use these reductions to determine the actual ‘rent’ the owner is charging for the unassisted units.

Note, however, in some rental markets it is common practice for certain employees of the property management company (e.g., a resident manager) to reside in the property rent-free or at a significantly reduced rent as part of their employment compensation. The YHA should not take the rent or lack of rent for units in which a resident manager or similar type employee resides into consideration in making a rent reasonableness determination. The rent for these units does not represent the rent that is charged or would be charged for a comparable unassisted unit, but rather reflects some or all of the owner’s compensation for his or her employee(s).

In the case of a family moving into a multifamily property, the YHA may choose to only consider the most recent rentals in determining the rents that the owner is charging for comparable unassisted units. In some markets, new tenants routinely pay higher rents than the rents that longer time tenants in comparable units may be paying (often due to local rent stabilization programs or ordinances that limit rent increases for existing tenants).

However, in determining if subsequent rent increases result in rents that are reasonable for units occupied by families under voucher Housing Assistance Payments (HAP) contracts, the YHA should take any rent setting policies by the owner for existing tenants into consideration. Any increases in rent for HCV tenants over time should be similar to increases charged to unassisted tenants who have lived in their units for approximately the same amount of time. In other words, rents for existing HCV tenants may not exceed the rents charged to unassisted tenants in comparable units who have been in a property for approximately the same amount of time.

Similarly, in the case of a multifamily property undergoing a Housing conversion action, the families receiving vouchers as result of the action are existing tenants of the property, and the rents charged those families that choose to remain at the property with their HCV assistance must not exceed the rents charged for those existing tenants that do not qualify or do not accept the HCV assistance, even if the owner intends to eventually charge new tenants higher rents.

**The unit and the comparables shall be maintained in the file.**

The YHA maintains **database that** includes data on unassisted units for use by staff in making rent reasonableness determinations. The data is updated on an ongoing basis and purged when it is more than 12-months old

**Units that Must Not be Used as Comparables (PIH 2010-18 and PIH 2009-51)**

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest

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Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance. If a unit to be assisted is located in a complex that is regulated by a government entity- HUD, IRS, etc.; then the YHA shall use the rent determined by the government entity as being reasonable.

As noted in HUD Notice PIH 2009-51, in determining rent reasonableness, the YHA must ensure that the rents paid for HCV assisted units do not exceed the rents for comparable units that are not assisted under a Federal, State, or local government program. Units for which the owner has simply decided of his or her own volition to charge rents that are below what other tenants are charged and what the market might actually bear are not assisted units for purposes of rent reasonableness determinations. Rents for these particular units in the property must be considered to establish if an HVC rent to owner is reasonable.

However, in addition to units assisted under a Federal, State or local government program, the following units are also considered to be assisted units on the premises and would not be taken into consideration for rent reasonableness determinations:

- Units where the rents and/or rent increases are controlled or restricted by law or a court order, so long as the law or court order does not also apply to voucher participants. The YHA is responsible for verifying the existence and applicability of the law or court order prior to excluding the units from the rent reasonableness determination.

In cases of a property undergoing a Housing Conversion Action, units occupied by tenants on the date of the eligibility event who do not receive vouchers are considered assisted if the owner chooses to continue below market rents to those families by offering lower rents or other rent concessions to the impacted families. If the owner of such a property intends to charge lower rents to the non-voucher tenants living in the property at the time of conversion, the owner must provide written notice to the YHA and a list of the covered families, a description of the concession, the duration of the lower rents or concessions, the units in which the families are residing, and copies of the families' leases.

Owners of multifamily properties that underwent a Housing Conversion Action prior to the issuance of this Notice may also provide such a notice to the YHA at the time of a subsequent rent increase for voucher families, identifying families that resided in the property on the date of the eligibility event that did not receive a voucher. The owner must provide the same information and documentation that is required for new conversion actions, including evidence that the covered families resided in the property on the date of the eligibility event. The YHA, upon verifying the information submitted by the owner, must then exclude those units from future rent reasonableness determinations for the duration of the lower rents or concessions.

### **Rents Charged for Other Units on the Premises**

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises. YHA

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will use the RFTA as a method to determine rent reasonable for multifamily units in accordance with HUD's PIH Notice 2003-12 and the current RFTA.

By accepting the YHA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give the YHA information regarding rents charged for other units on the premises.

### **8-III.D. YHA RENT REASONABLENESS DATA BASE METHODOLOGY**

#### **How Market Data is Collected**

##### YHA Policy

The YHA will collect and maintain data on market rents in the YHA's jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

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<b>EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS</b>
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Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

### **Sanitary Facilities**

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

### **Food Preparation and Refuse Disposal**

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

### **Space and Security**

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

### **Thermal Environment**

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene, portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

### **Illumination and Electricity**

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

### **Structure and Materials**

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

### **Interior Air Quality**

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one openable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

### **Water Supply**

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

### **Lead-Based Paint**

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- Provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the YHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by the YHA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

### **Access**

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

### **Site and Neighborhood**

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

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### **Sanitary Condition**

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

### **Smoke Detectors**

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

### **Hazards and Health/Safety**

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

<p style="text-align: center;"><b>EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY</b></p>
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Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities.* The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
- *Food Preparation and Refuse Disposal.* The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
- *Space and Security.* The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.

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- *Energy conservation items.* The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
  - *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.
- (6) *Structure and Materials.* Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- (7) *Indoor Air.* Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- (8) *Sanitary Conditions.* The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- (9) *Neighborhood conditions.* Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

**Chapter 9**  
**GENERAL LEASING POLICIES**

**INTRODUCTION**

This Section covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for the YHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the YHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by the YHA and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by the YHA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

**9-I.A. TENANT SCREENING**

The YHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a)(1)].

The YHA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of the YHA's policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before YHA approval of the tenancy, the YHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)].

The YHA must provide the owner with the family's current and prior address (as shown in the YHA records); and the name and address (if known to the YHA) of the landlord at the family's current and prior address. [24 CFR 982.307 (b)(1)].

The YHA is permitted, but not required, to offer the owner other information in the YHA's possession about the family's tenancy [24 CFR 982.307(b)(2)].

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The YHA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

The YHA may not disclose to the owner any confidential information provided by the family in response to a YHA request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(b)(4)].

#### YHA Policy

The YHA will provide the families current and prior address, the name and address of the landlord of current and prior addresses. This information will be provided to an owner once a written request for the information is received.

The YHA will not provide additional information to the owner above the regulatory requirements.

### **9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]**

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the YHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the YHA:

- Completed Request for Tenancy Approval (RFTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RFTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for the YHA to determine whether to approve the assisted tenancy in this unit.

Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

Owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the YHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

Both the RFTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

#### YHA Policy

The RFTA must be signed by both the family and the owner.

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The family or owner must submit the RFTA.

Completed RFTA (including the proposed dwelling lease) must be submitted as hard copies, in-person by the family. RFTA's that are mailed or faxed will be accepted in special circumstances only.

The family may not submit, and the YHA will not process, more than one (1) RFTA at a time.

When the family submits the RFTA, the YHA will review the RFTA for completeness.

If the RFTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RFTA, the YHA will notify the family and the owner of the deficiencies.

Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, or by fax. The YHA will not accept missing information over the phone.

When the family submits the RFTA and proposed lease, the YHA will also review the terms of the RFTA for consistency with the terms of the proposed lease.

If the terms of the RFTA are not consistent with the terms of the proposed lease, the YHA will notify the family and the owner of the discrepancies.

Corrections to the terms of the RFTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail or by fax. The YHA will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the YHA will attempt to communicate with the owner and family by phone, fax, or email. The YHA will use mail when the parties can't be reached by phone, fax, or email.

The lease will be approved if:

The unit met Housing Quality Standards and any additional standard identified in this Administrative Plan;

The rent is determined to be reasonable under the YHA rent reasonableness standards.

When the gross rent for the unit exceeds the payment standard for the family, the participant will not be required to pay more than 40% of monthly adjusted income for rent and utilities on the initial lease.

The security deposit amount is consistent with state and local practice for unassisted units;

The proposed lease complies with HUD requirements;

The owner, unit and family continue to be eligible; and

The owner or owner's agent has supplied a Social Security Number or Employer Identification Number and an IRS form W-9.

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The YHA will not pay assistance on behalf of a family to any owner prior to the effective date of a lease and contract, executed by all parties.

If the lease is disapproved, the owner and family will be provided an opportunity to correct the problem prior to a specific date established by the YHA.

If the lease is approved, final computations of Total Tenant Payment, Tenant Rent, Utility Reimbursement Payment, and Housing Assistance Payments will be completed. The Housing Assistance Contract will be prepared for execution.

Upon completion of the documents, the family and the owner will execute the lease agreement and tenancy addendum and the owner and the YHA will execute the HAP Contract.

Copies of the documents will be furnished to the parties who signed the respective documents

Occupancy of the housing which requires repairs in order to be made decent, safe and sanitary may be assisted through the Section 8 Housing Choice Voucher Programs ONLY after such repairs have been completed.

- Repairs completed by the fifteenth (15<sup>th</sup>) of the month will be prorated
- Repairs completed after the fifteenth (15<sup>th</sup>) of the month will not be prorated and contracts will begin the first (1<sup>st</sup>) of the following month.

**CAUTION:** If the Owner allows a Family to move into a unit prior to execution of a HAP Contract with the YHA, the Owner is doing so at his/her own risk. The YHA will not be obligated to make a payment to the Owner on behalf of the Family during this period.

### **9-I.C. OWNER PARTICIPATION**

The YHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the YHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

### **9-I.D. ELIGIBLE UNITS**

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the YHA's jurisdiction. This includes the dwelling unit they are currently occupying.

**Ineligible Units [24 CFR 982.352(a)]**

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The YHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

#### YHA-Owned Units [24 CFR 982.352(b)]

Otherwise eligible units that are owned or substantially controlled by the YHA issuing the voucher may also be leased in the voucher program. In order for a YHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the YHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a YHA-owned unit without any pressure or steering by the YHA.

#### YHA Policy

The YHA does have eligible YHA-owned units available for leasing under the voucher program.

#### **Special Housing Types [24 CFR 982 Subpart M]**

HUD regulations permit, but do not generally require, the YHA to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option. See Chapter 15 for specific information and policies on any of these housing types that the YHA has chosen to allow.

The regulations do require the YHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

#### **Assisted Living Housing**

PIH 2012-40 applies to all public housing agencies (PHA) that administer the HCV program for families that live in, or wish to live in, assisted living facilities. In accordance with the definition under Section 232(b) of the National Housing Act (12 USC 1715w(b)), an assisted living facility is a public facility, proprietary facility, or facility of a private nonprofit corporation that:

- (1) Is licensed and regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located);
- (2) Makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money,

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using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy; and

- (3) Provides separate dwelling units for residents, each of which may contain a full kitchen and bathroom, and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility.

Assisted living facilities may be referred to as residential care facilities, adult care facilities, congregate care facilities or group homes as long as they meet the requirements noted above. Assisted living facilities are designed for residents who have the physical ability to live independently but need assistance with some activities of daily living such as personal care, transportation, meals, laundry, medication monitoring, security and housekeeping. A person residing in an assisted living unit must not require continual medical or nursing care.

PIH 2012-40 describes HUD's implementation of Section 302 of the Section 202 Supportive Housing for the Elderly Act of 2010 (Public Law 111-372). Section 302, *Monthly Assistance Payment under Rental Assistance*, amends section 8(o)(18)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(18)(B)(iii)) to allow a YHA to require a family to pay more than 40 percent of its monthly adjusted income for a unit in an assisted living facility if the amount or percentage is reasonable given the services and amenities provided by the assisted living facility and as the Secretary deems appropriate.

YHA may submit a request for a waiver of 24 CFR § 982.508 and § 982.305(a)(5) through the waiver process under 24 CFR § 5.110 to require a family to pay more than 40 percent of its monthly adjusted income for an assisted unit, in order to allow the family to lease an assisted living unit that would otherwise be disapproved because the family share would exceed 40 percent of monthly adjusted income. HUD will review such requests on a case-by-case basis and may grant the waiver if HUD determines the request demonstrates good cause.

YHA must submit with its waiver request:

- (1) verification that the unit meets the definition of assisted living;
- (2) a description of the services and amenities provided that would warrant a higher family share; and
- (3) a copy of sections 9 and 12 of the Family Report (form HUD-50058) for verification that family share exceeds 40 percent of adjusted income.

HUD would expect that such requests would not result in the family share exceeding 70 percent of the family's adjusted income.

#### **Duplicative Assistance [24 CFR 982.352(c)]**

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);

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- Section 101 rent supplements;
  - Section 236 rental assistance payments;
  - Tenant-based assistance under the HOME Program;
  - Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
  - Any local or State rent subsidy;
  - Section 202 supportive housing for the elderly;
  - Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
  - Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

#### **Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]**

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

#### **Unit Size**

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

#### **Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]**

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

#### **Rent Burden [24 CFR 982.508]**

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the dwelling unit rent must be at a level where the family's share of rent does not exceed 40 percent of the family's monthly adjusted income. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

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## **9-I.E. LEASE AND TENANCY ADDENDUM**

The family and the owner must execute and enter into a written dwelling lease for the assisted unit. This written lease is a contract between the tenant family and the owner; the YHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

### **Lease Form and Tenancy Addendum [24 CFR 982.308]**

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

All provisions in the HUD-required Tenancy Addendum must also be added word-for-word to the owner's standard lease form, for use with the assisted family. The Tenancy Addendum includes the tenancy requirements for the program and the composition of the household as approved by the YHA. As a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner and the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

### YHA Policy

The YHA does not provide a model or standard dwelling lease for owners to use in the HCV program.

### **Lease Information [24 CFR 982.308(d)]**

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family

### **Term of Assisted Tenancy**

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit the YHA to approve a shorter initial lease term if certain conditions are met.

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YHA Policy

The YHA will not approve an initial lease term of less than one (1) year.

During the initial term of the lease, the owner may not raise the rent to owner, except as provided in assisted housing types as approved by HUD or governmental entities.[ 24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be in the dwelling lease if they exist.

The YHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 CFR 982.309(b)].

**Security Deposit [24 CFR 982.313 (a) and (b)]**

The owner may collect a security deposit from the tenant. The YHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if the YHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

YHA Policy

The YHA will allow the owner to collect any security deposit amount the owner determines is appropriate. Therefore, no modifications to the HAP contract will be necessary.

**Separate Non-Lease Agreements between Owner and Tenant**

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner minus the YHA's housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

YHA Policy

The YHA permits owners and families to execute separate and reasonable cost, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.

Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item,

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appliance or service, may be included in a separate non-lease agreement between the owner and the family.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

### **YHA Review of Lease**

The YHA will review the dwelling lease for compliance with all applicable requirements.

#### YHA Policy

If the dwelling lease is incomplete or incorrect, the YHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by fax. The YHA will not accept missing and corrected information over the phone

Because the initial leasing process is time-sensitive, the YHA will attempt to communicate with the owner and family by phone, fax, or email. The YHA will use mail when the parties can't be reached by phone, fax, or email.

The YHA is permitted, but is not required, to review the lease to determine if the lease complies with State and local law and is permitted to decline to approve the tenancy if the YHA determines that the lease does not comply with State or local law [24 CFR 982.308(c)]

#### YHA Policy

The YHA will not review the owner's lease for compliance with state/local law, unless YHA has reason to believe that the lease does not comply with program requirements.

### **9-I.F. TENANCY APPROVAL [24 CFR 982.305]**

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, the YHA must promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, the YHA must ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by the YHA and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must be reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the YHA, with no conflicts of interest [24 CFR

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982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305(b)].

#### YHA Policy

The YHA will complete its determination within 10 business days of receiving all required information.

If the terms of the RFTA/proposed lease are changed for any reason, including but not limited to negotiation with the YHA, the YHA will obtain corrected copies of the RFTA and proposed lease, signed by the family and the owner.

Corrections to the RFTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. The YHA will not accept corrections over the phone.

If the YHA determines the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. The YHA will instruct the owner and family of the steps that are necessary to approve the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), the YHA will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

#### **9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305]**

The HAP contract is a written agreement between the YHA and the owner of the dwelling unit occupied by a housing choice voucher assisted family. Under the HAP contract, the YHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit and obliges the owner to comply with all program requirements.

The HAP contract format is prescribed by HUD.

If the YHA has given approval for the family of the assisted tenancy, the owner and the YHA execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

The YHA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The YHA must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

The YHA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the YHA will pay housing assistance payments after execution of

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the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60-day period is void, and the YHA may not pay any housing assistance payment to the owner.

#### YHA Policy

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the YHA. The YHA will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and the YHA will execute the HAP contract. The YHA will not execute the HAP contract until the owner has submitted IRS form W-9. The YHA will ensure the owner receives a copy of the executed HAP contract.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

#### **9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]**

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the YHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, YHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, voucher assistance in the unit shall not be continued unless the YHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances
- Changes in lease provisions governing the term of the lease
- The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RFTA) along with a new dwelling lease containing the altered terms. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of rent, the owner must notify the YHA of any changes in the amount of the rent to owner at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. The YHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or give the family notice in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

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YHA Policy

Where the owner is requesting a rent increase, the YHA will determine whether the requested increase is reasonable within 30 business days of receiving the request from the owner. The owner will be notified of the determination in writing or orally.

Rent increases will go into effect on the first of the month following the 60 day period after the owner notifies the YHA of the rent change or on the date specified by the owner, whichever is later.

## Chapter 10

### MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

#### INTRODUCTION

Freedom of choice is a hallmark of the housing choice voucher (HCV) program. In general, therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and YHA policies governing moves within or outside the YHA's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under the YHA's HCV program, whether the family moves to another unit within the YHA's jurisdiction or to a unit outside the YHA's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into the YHA's jurisdiction. This part also covers the special responsibilities that the YHA has under portability regulations and procedures.

#### PART I. MOVING WITH CONTINUED ASSISTANCE

##### 10-I.A. ALLOWABLE MOVES

HUD regulations list five conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the YHA a copy of the notice at the same time [24 CFR 982.314(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.314(b)(1)(ii)].

##### YHA Policy

If the family and the owner mutually agree to terminate the lease for the family's unit, the family must use the YHA notice of intent to move. However, leases that are still within the initial twelve-month term may not be terminated, unless provided by reasonable accommodation or VAWA.

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- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b)(2)]. The family must give the YHA a copy of any owner eviction notice [24 CFR 982.551(g)].
  - The YHA has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.314(b)(1)(i)].
  - The YHA determines the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, the YHA must issue the family a new voucher, and the family and YHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the YHA must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the YHA gives notice to the owner. [24 CFR 982.403(a) and (c)]

### **10-I.B. RESTRICTIONS ON MOVES**

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which the YHA may deny a family permission to move and two ways in which the YHA may restrict moves by a family.

#### **Denial of Moves**

HUD regulations permit the YHA to deny a family permission to move under the following conditions:

#### ***Insufficient Funding***

The YHA may deny a family permission to move if the YHA does not have sufficient funding for continued assistance [24 CFR 982.314(e)(1)].

#### **YHA Policy**

The YHA will deny a family permission to move on grounds the YHA does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the YHA; (b) the YHA can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) the YHA can demonstrate, in accordance with the policies that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs. If denying for insufficient funding, the YHA must notify the local HUD office within 10 business days of a determination to deny a portability or move based on insufficient funding. This policy applies to moves within the YHA's jurisdiction as well as to moves outside it under portability. Once funds are available, the YHA will allow the move.

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***Grounds for Denial or Termination of Assistance***

The YHA has grounds for denying or terminating the family's assistance [24 CFR 982.314(e)(2)].

**YHA Policy**

YHA will grant a family permission to move if YHA has no grounds to deny or terminate the family's assistance for program violations, (a thorough definition of program violations can be found in the Administrative Plan). Further definition of a family's obligations include:

The client is current on any repayment agreements.

Client has provided a copy of the thirty (30) day notice, submitted to and signed by the current landlord. The notice must clearly state the client is in good standing and owes no money.

The client has not received a notice of cancellation from the Housing Authority.

However, in addition, if the calculations reveal that the subsidy amount to be paid to the new owner on behalf of the client would be zero, YHA would not render any assistance should the family proceed with the move.

Upon dispute between the participant and owner on the condition of a unit, repairs, or repair cost, the YHA shall perform a special inspection to determine the participant's obligations for the repairs, cost, or their continuation of assistance in the program.

**Restrictions on Elective Moves [24 CFR 982.314(c)]**

HUD regulations permit the YHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit the YHA to prohibit more than one elective move by a participant family during any 12-month period.

**YHA Policy**

The YHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the YHA's jurisdiction or outside it under portability.

The YHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the YHA's jurisdiction.

The YHA will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), victims of domestic violence, or to address an emergency situation over which a family has no control.

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In addition, the YHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

## **10-I.C. MOVING PROCESS**

### **Notification**

If a family wishes to move to a new unit, the family must notify the YHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.314(d)(2)]. If the family wishes to move to a unit outside the YHA's jurisdiction under portability, the notice to the YHA must specify the area where the family wishes to move [24 CFR 982.314(d)(2), Notice PIH 2004-12]. The notices must be in writing [24 CFR 982.5].

### **Approval**

#### YHA Policy

Families that wish to move must contact their Housing Specialist. The Housing Specialist will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. If the family is eligible to move, the Housing Specialist may assign the date and time for the family to attend a re-house class, if one is required.

### **Reexamination of Family Income and Composition**

#### YHA Policy

For families approved to move to a new unit within the PHA's jurisdiction, the PHA will perform a new annual reexamination in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of the PHA's jurisdiction under portability, the PHA will follow the policies set forth in Part II of this chapter.

### **Voucher Issuance and Briefing**

#### YHA Policy

For families approved to move to a new unit within the PHA's jurisdiction, the PHA will issue a new voucher within 10 business days of the PHA's written approval to move. No briefing is required for these families. The PHA will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and the PHA approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the PHA's jurisdiction under portability, the PHA will follow the policies set forth in Part II of this chapter.

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**Housing Assistance Payments [24 CFR 982.311(d)]**

When a family moves out of an assisted unit, the YHA may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

Standard procedure for treatment of the HAP on a vacated unit will be as follows: If family moves from the unit between the 1st and the 14<sup>th</sup> of the month, the previous landlord will be paid one half months HAP. If the family moves from the unit between the 15<sup>th</sup> and the 31<sup>st</sup> of the month, the previous landlord will receive the entire months HAP, unless the lease states otherwise.

**PART II: PORTABILITY**

**10-II.A. OVERVIEW [HCV Guidebook, PIH Notices 2004-12, PIH 2007-5, PIH 2008-43, and PIH 2011-3, and Final Rule dated August 20, 2015, PIH 2016-09]**

HUD's guidebook and PIH notices provide guidance on public housing agency (PHA) administrative responsibilities related to family moves with continued assistance both within a PHA's jurisdiction and portability moves. In addition to reviewing the administrative responsibilities of the initial PHA and the receiving PHA for moves with continued assistance under portability, HUD's notices and recent final rules set-forth additional requirements for PHAs who deny moves due to insufficient funding both within and outside the initial PHA's jurisdiction in accordance with 24 CFR 982.314(e)(1).

The most current guidance is PIH 2016-09 and the final rule dated August 20, 2015 also:

- Sets forth the penalties that may be imposed on PHAs that deny family requests to move on the basis of 24 CFR 982.314(e)(1) if the conditions necessary to deny the move on the basis of insufficient funding do not exist.
- Requires PHAs to notify HUD within 10 business days when it becomes necessary to deny families' requests to move due to insufficient funding.
- Requires receiving PHAs to provide a notification by email or other confirmed delivery method to the initial PHA on its intent to bill or absorb before the family is approved for the portability move.
- Encourages PHAs to enlist the assistance of the local Area HUD Office in resolving billing related issues.
- Outlines the steps an initial PHA who does not receive annual updates for families under billing arrangements should take in seeking assistance from their Area HUD Office as well as receiving PHAs who do not receive timely payments from initial PHAs

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- Requires an initial PHA to notify the local HUD office within 10 business days of a determination to deny a portability move based on insufficient funding;
  - Provides that the voucher issued by the receiving PHA to the family may not expire before 30 calendar days has passed from the expiration date of the initial PHA's voucher;
  - Requires briefings for all participating on how portability works and the benefits of living in low-poverty census tracts; and
  - Allows a family to choose the receiving PHA to administer their voucher should they choose to use portability.
  - Updates the latest portability guidance issued in HUD Notice.

### **Background**

Portability is a comprehensive process for and PHA and staff should become familiar with the regulations and PIH notices that impact this area. Specific PIH notices include PIH 2008-43, PIH 2004-12, PIH 2007-5 and PIH 2011-3 and Final Rule August 15, 2015. One of the key features of the housing choice voucher program is the mobility of the assistance. The regulations at 24 CFR 982.353 provide that housing choice voucher participants may choose a unit that meets program requirements anywhere in the United States, provided that a PHA administering the tenant-based program has jurisdiction over the area in which the unit is located. Moves with continued assistance can occur both inside and outside of the initial PHA's jurisdiction. The term "portability" refers to the process of leasing a dwelling unit with tenant-based housing voucher assistance outside of the jurisdiction of the PHA that initially issues the family its voucher (the initial PHA). Program regulations covering where a family may move and the responsibilities of the initial PHA and the receiving PHA (the PHA with jurisdiction over the area to which the family moves) are found at 24 CFR 982.353 through 982.355.

When a family moves under portability, the receiving PHA may choose to absorb the family into the receiving PHA's program or bill the initial PHA. The program regulations at 24 CFR 982.355(e) provide that the receiving PHA may bill the initial PHA for housing assistance payments (HAP) and administrative fees to fund the assistance for a portable family. The regulations require that the initial PHA must promptly reimburse the receiving PHA for the full amount of the HAP payments and with 80 percent of the on-going administrative fee (or a negotiated amount if both PHAs agree) for each month that the family receives assistance from the receiving PHA. PHAs apply the pro-ration factor determined by HUD to the 80 percent of the Column B posted rate. The posted administrative fees are found at [www.hud.gov/offices/pih/programs/hcv/adminfees2010.cfm](http://www.hud.gov/offices/pih/programs/hcv/adminfees2010.cfm). These pro-rated fee amounts may be used for the entire calendar year to avoid the need for PHAs to re-calculate their portable fees each quarter. Information on administrative fees for portability billing purposes for subsequent calendar years will be provided in the annual HUD guidance on administrative fees. Administrative fees are subject to funding reductions from HUD.

The regulations further provide that the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required billing forms. The initial PHA and the receiving PHA must also comply with billing and payment deadlines under

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the financial procedures. HUD may assess penalties against an initial PHA or a receiving PHA for violations, as determined by HUD, of the portability requirements.

HUD may transfer units and funds for assistance to portable families to the receiving PHA from funds available under the initial PHA annual contributions contract (ACC) (see 24 CFR 982.355(f)(1)). HUD will continue to exercise this authority to transfer units and funds from the initial PHA to the receiving PHA in cases where the initial PHA fails to comply with the billing procedures described below.

The YHA will follow the rules and policies as set forth by HUD when it is acting as the initial or the receiving PHA for a family.

YHA shall not deny a victim of domestic violence that is eligible under VAWA the access to portability.

The YHA will administer its housing choice voucher program in compliance with all applicable fair housing requirements, including the authorities cited at 24 CFR 5.105(a) and title II of the Americans with Disabilities Act. The YHA must also affirmatively further fair housing in accordance with 24 CFR 903.7(o) by identifying and addressing any impediments to fair housing choice, including helping families use their vouchers to move to non-minority concentrated areas both within its jurisdiction and through portability moves. [24 CFR 982.53].

### **Equal Opportunity Requirements**

The public housing agency must administer its housing choice voucher program in compliance with all applicable fair housing requirements, including the authorities cited at 24 CFR 5.105(a) and title II of the Americans with Disabilities Act. The PHA must also affirmatively further fair housing in accordance with 24 CFR 903.7(o) by identifying and addressing any impediments to fair housing choice, including helping families use their vouchers to move to non-minority concentrated areas both within its jurisdiction and through portability moves. See 24 CFR 982.53 for the equal opportunity requirements for the Housing Choice Voucher program and Chapter 2 for YHA requirements

## **10-II.B. INITIAL PHA ROLE**

### **Allowable Moves under Portability (Final Rule August 20, 2015)**

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA may choose the receiving PHA [24 CFR 982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the YHA's jurisdiction under portability. The initial PHA, in accordance with HUD regulations and YHA's policy, determines whether a family qualifies.

### ***Applicant Families***

Under HUD regulations, most applicant families qualify to lease a unit outside the PHA's jurisdiction under portability. However, HUD gives the YHA discretion to deny a portability move by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance.

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YHA Policy

In determining whether or not to deny an applicant family permission to move under portability because the YHA lacks sufficient funding or has grounds for denying assistance to the family, YHA will follow the policies established within the Administrative Plan. On denials for insufficient funding, YHA will notify the HUD Area Office within 10 business days of the determination.

In addition, YHA may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

YHA Policy

If neither the head of household nor the spouse/co-head of an applicant family had a domicile (legal residence) in the YHA's jurisdiction at the time the family's application for assistance was submitted, the family must live in the YHA's jurisdiction with voucher assistance for at least 12 months before requesting portability.

The YHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or victims of domestic violence. However, any exception to this policy is subject to the approval of the receiving PHA [24 CFR 982.353(c)(3)].

***Participant Families***

The YHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease. [24 CFR 982.3539b.)]

YHA Policy

The YHA will determine whether a participant family may move out of the YHA's jurisdiction with continued assistance in accordance with the regulations and policies set forth in the program. The YHA will notify the family of its determination in accordance with the approval policy set forth in the policies. YHA will consider exceptions of moving out in violation of the lease for victims of VAWA.

**Determining Income Eligibility**

***Applicant Families***

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(3)]. The family must specify the area to which the family wishes to move [Notice 2004-12].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c)(1)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2004-12].

***Participant Families***

The income eligibility of a participant family is not re-determined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2), 24 CFR 982.355(c)(1)]. However, an initial HAP on a new unit cannot be executed if the amount of assistance is -0-.

### **Reexamination of Family Income and Composition**

No new reexamination of family income and composition is required for an applicant family.

#### YHA Policy

For a participant family approved to move out of its jurisdiction under portability, the YHA generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

If the participant family's income exceeds the income limit of the Receiving PHA, the family will not be denied assistance. However, the PHA cannot enter into a HAP if the amount of assistance is -0-.

The YHA will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

### **Briefing**

The regulations and policies on briefings set forth in Chapter 5 of this plan require the YHA to provide information on portability to all applicant families that qualify to lease a unit outside the YHA's jurisdiction under the portability procedures. A special briefing may be required to explain opportunity areas, how portability works and the benefits in living in low-poverty census tracts.

#### YHA Policy

An individual or group briefing will be mandatory for all portability families. The briefing will be scheduled within 10 business days after the Receiving PHA receives the documents from the family or the Initial PHA.

The YHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5) including any enhancements on opportunity areas. The YHA will provide the name, address, and phone of the contact for the PHA in the jurisdiction to which they wish to move. The YHA will advise the family of the PHA's policies and procedures that they will be under, including subsidy standards and voucher extension policies

### **Voucher Issuance and Term**

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the YHA will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

#### YHA Policy

For families approved to move under portability, the YHA will issue a new voucher within 10 business days of the YHA's written approval to move. The initial term of the voucher will be 60 days.

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If the family moving under portability is living in a unit where HAP has been abated because of the failure to complete the HQS repairs, or the client previously vacated their unit due to unsafe condition, the voucher issuance date will be the effective date of that action.

## **Voucher Extensions and Expiration**

### YHA Policy

The YHA will approve **no** extensions to a voucher issued to an applicant or participant family porting out of the YHA's jurisdiction except under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the initial PHA's jurisdiction and search for a unit there, or (c) as a reasonable accommodation for persons with disabilities. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the initial PHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 60 days following the expiration date of the initial PHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

The receiving PHA will then provide that the Voucher issued by the receiving PHA to a family may not expire before 30 calendar days has passed from the expiration of the initial PHA's voucher. (Final Rule August 20, 2015)

## **Portability-Initial PHA Responsibilities: Contacting the Receiving PHA**

When a family wishes to move under portability, the family must inform the initial PHA of the area to which the family wishes to move. In the case where the family is not currently a program participant, the initial PHA must determine if the family is income eligible in the area to which the family wishes to move. If the family is not income eligible in the area to which the family wishes to move, the PHA must inform the applicant family they may not move to the area in question and receive voucher assistance. Income eligibility is not re-determined when a participant family (a family that is already under a HAP contract) exercises portability.

The initial PHA must contact the receiving PHA via email or other confirmed delivery method to determine whether the receiving PHA will bill or absorb the family's voucher. Based on the receiving PHA's response, the initial PHA must determine whether they will approve or deny the portability request. The policies outline the reasons a PHA may deny a family's request. Once the portability request is approved, the initial PHA issues the family a voucher and must contact the receiving PHA on the family's behalf. The initial PHA must promptly notify the receiving PHA to expect the incoming family (24 CFR 982.355(c)(2)). This means the initial PHA contacts the receiving PHA on the family's behalf, typically by telephone, fax, or email. Simply referring the family to HUD or to a website for information on the receiving PHA's address does not fulfill the responsibilities of the initial PHA under the program regulations. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA (e.g., the name and telephone number of the staff person responsible for working with incoming

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portability families and any procedures related to appointments for voucher issuance the receiving PHA has shared with the initial PHA). The Form HUD-52665, Family Portability Information, contains a line that the initial PHA uses to identify the receiving PHA

#### YHA Policy

Because the portability process is time-sensitive, the YHA will notify the receiving PHA by phone, fax, or e-mail to expect the family. The YHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, e-mail and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. The YHA will pass this information along to the family. The YHA will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

#### **Portability-Initial PHA Responsibilities: Part I of the Form HUD-52665**

Once the family is approved to move using portability, the initial PHA completes Part I of the Form HUD-52665 and mails or faxes it to the receiving PHA, along with a copy of the family's voucher issued by the initial PHA, a current copy of Form HUD-50058, and copies of the income verification supporting the form. (Note that in the case of an applicant, the initial PHA has not completed the HUD-50058 and submitted the information to HUD because the family is not yet a new admission. However, the PHA must provide the family information and income information to the receiving PHA in a format similar to the Form HUD-50058 so that the information is easily available for use by the receiving PHA.)

Part I of the form provides the date by which the initial billing notice provided by the receiving PHA must be received by the initial PHA. The initial billing submission must be completed and mailed by the receiving PHA within 10 working days of the HAP contract execution but no later than 60 days following the expiration date of the family voucher issued by the initial PHA.

If the initial PHA has not received a billing notice by the deadline and intends not to accept a late billing, the initial PHA must inform the receiving PHA of this decision in writing. If the initial PHA informs the receiving PHA that it will not honor a late billing, the initial PHA is not required to honor any billing notice received after the billing deadline. If the initial PHA still subsequently receives a late billing notice on behalf of the family, it simply returns the late Form HUD-52665 to the receiving PHA, and the receiving PHA must absorb the family.

In certain circumstances, HUD may require the initial PHA to accept the late billing (such as where the receiving PHA does not have the funds to support the voucher and the family would be terminated if the initial PHA refused to accept the late billing). The initial PHA may contact HUD to report the receiving PHA's failure to submit the bill in accordance with these procedures. HUD may take action to address the receiving PHA's failure to do so, which may include reducing the receiving PHA's administrative fee. Additionally, HUD may subsequently transfer units and funding from the receiving PHA to the initial PHA when it is feasible, since the initial PHA was required to accept the late billing.

#### YHA Policy

In addition to these documents, the YHA will provide the following information, if available, to the receiving PHA:

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- Social security Numbers (SSNs)
  - Documentation of SSNs for all family members that are on file
  - Documentation of legal identity
  - Documentation of citizenship or eligible immigration status
  - Documentation of participation in the earned income disallowance (EID) benefit
  - Documentation of participation in a family self-sufficiency (FSS) program

The YHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3], upon the family's request.

#### YHA Policy

If the YHA has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail. If the PHA reports that the family is not yet under HAP contract, the YHA will inform the receiving PHA that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. The YHA will send the receiving PHA a written confirmation of its decision by mail.

The YHA will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

The Receiving PHA will notify the Initial PHA in writing of any termination of assistance to families within 10 working days of the termination of assistance. If a hearing is required and requested by the family, the hearing will be conducted by the Receiving PHA, using the regular hearing procedures included in this Administrative Plan. A copy of the hearing decision will be furnished to the Initial PHA.

#### **Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2011-03]**

##### YHA Policy

The YHA will make regular monthly payments on its monthly check run and will utilize direct deposit when available to ensure that the payment is received by the deadline unless the receiving PHA notifies the YHA that direct deposit is not acceptable to them.

### **10-II.C. RECEIVING PHA ROLE**

#### **Portability-Receiving PHA Responsibilities: Processing Responsibilities**

The receiving PHA must respond by email or other confirmed delivery method to the initial PHA's inquiry to determine if the family's voucher will be billed or absorbed. HUD encourages PHAs to communicate this information via email in order to expedite the families' requests. If the receiving PHA notifies the initial PHA that they will be absorbing the voucher, the receiving PHA cannot reverse its decision at a later date. This prevents placing a financial hardship on the initial PHA and putting a family that has already terminated the lease and vacated their assisted unit and moved to the new jurisdiction at risk of losing their assistance. After receiving the form

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HUD-52665 and supporting documentation from the initial PHA, the receiving PHA must promptly issue a voucher to the family for its search in the receiving PHA jurisdiction, the term of which may not expire before 30 calendar days has passed from the expiration date of the initial PHA voucher. HUD expects the receiving PHA to process the family's paperwork and issue the incoming family a voucher for its jurisdiction within two weeks of receiving the HUD-52665 and supporting documentation, provided the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures.

A receiving PHA should not process the family if the initial PHA voucher has already expired when it receives the paperwork from the initial PHA, but should refer the family back to the initial PHA. The initial PHA would have to decide to extend the term of the initial PHA voucher (and the billing deadline) before the receiving PHA would process the portability move in such an instance.

The receiving PHA does not re-determine income eligibility for a portable family that was already receiving voucher assistance and may not delay the family's housing search in issuing the voucher. Should the receiving PHA wish to conduct its own background checks and/or conduct a new income reexamination on a family that has already received housing assistance payments under the initial PHA, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit until those processes are completed. However, the PHA may take subsequent action (e.g., recalculating the HAP payment based on updated income information; terminating the family's participation in the program due to criminal background or failing to disclose necessary information) against the family based on the results.

In the case of an applicant family, the receiving PHA may delay issuing or otherwise delay approval of a unit only if the re-certification is necessary to determine income eligibility. For example, if the applicant family initially reported they had no earned income but they are moving because they obtained new employment, the receiving PHA may need to conduct a recertification of income to ensure the family is income eligible in the receiving PHA's jurisdiction.

The receiving PHA may always delay approval of the unit or issuance of the voucher if the family refuses to comply with the receiving PHA procedures. In any case where the receiving PHA is refusing to process or provide assistance under the portability procedures, the family must be given the opportunity for an informal review or hearing in accordance with 24 CFR 982.554 or 982.555.

The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA voucher, either when it initially issues its own voucher or by subsequently extending its own voucher's term. However, if the receiving PHA provides the family with search time beyond the expiration date of the initial PHA's voucher, it must inform the initial PHA of the extension and should bear in mind the billing deadline that is based on the expiration date of the voucher issued by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a Request for Tenancy Approval, execute a HAP contract, and cover the anticipated delivery time (if the PHA is not submitting the billing information by fax or email) so that it will be received by the initial PHA by the deadline date.

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If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA, but instead wishes to return to the initial PHA or wishes to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extensions of search time provided by the receiving PHA voucher are only valid for the family's search in the receiving PHA jurisdiction. Any extensions of the initial PHA voucher necessary to allow the family additional search-time to return to the initial PHA's jurisdiction or to move to another jurisdiction would be at the discretion of the initial PHA.

The receiving PHA may absorb the family into its own program once the HAP contract is executed on behalf of the family by the receiving PHA, assuming it has funding available under its ACC to do so and such a decision will not result in over-leasing for the Calendar Year. The receiving PHA may also absorb a portable family assisted through a billing arrangement by terminating the billing arrangement with the initial PHA. In such a case, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family.

Although a receiving PHA notifies the initial PHA of its intent to absorb an incoming family early in the portability process, a PHA does not technically "absorb" a family into its program until the receiving PHA executes a HAP contract on behalf of the family in the receiving PHA jurisdiction. PHAs may not engage in sham or fake portability paperwork exercises in an attempt to address their utilization or leasing problems. If the family is not placed under HAP contract in the receiving PHA jurisdiction, the receiving PHA cannot absorb the family.

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e)(2)].

### **Initial Contact with Family**

When a family moves into the YHA's jurisdiction under portability, the family is responsible for promptly contacting the YHA and complying with the YHA's procedures for incoming portable families [24 CFR 982.355(c)(3)].

If the voucher issued to the family by the initial PHA has expired, the YHA does not process the family's paperwork but instead refers the family back to the initial PHA [Notice PIH 2004-12].

When a portable family requests assistance from the YHA, the YHA must promptly inform the initial PHA whether the YHA will bill the initial PHA for assistance on behalf of the portable family or will absorb the family into its own program [24 CFR 982.355(c)(5)]. If the YHA initially bills the initial PHA for the family's assistance, it may later decide to absorb the family into its own program [Notice PIH 2004-12]. (See later under "Absorbing a Portable Family" for more on this topic.)

### YHA Policy

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Within 10 business days after a portable family requests assistance, the YHA will notify the initial PHA whether it intends to bill the initial PHA on behalf of the portable family or absorb the family into its own program.

If for any reason the YHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2004-12]. (For more on this topic, see later under “Denial or Termination of Assistance.”)

### **Briefing**

HUD allows the YHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family’s search [Notice PIH 2004-12].

### YHA Policy

The YHA will not require the family to attend a group briefing. The YHA will provide the family with a portability briefing packet and, inform the family about the YHA’s payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, opportunity areas and the leasing process. The YHA may require the family attend a full briefing at a later date.

### **Income Eligibility and Reexamination**

HUD allows the YHA to conduct its own income reexamination of a portable family [24 CFR 982.355(c)(4)]. However, the YHA may not delay voucher issuance or unit approval until the reexamination process is complete unless the reexamination is necessary to determine that an applicant family is income eligible for admission to the program in the area where the family wishes to lease a unit [Notice PIH 2004-12, 24 CFR 982.201(b)(4)]. The YHA does not re-determine income eligibility for a portable family that was already receiving assistance in the initial PHA’s voucher program [24 CFR 982.355(c)(1)].

### YHA Policy

For any family moving into its jurisdiction under portability, the YHA will conduct a new reexamination of family income and composition and criminal background check. However, the YHA will not delay issuing the family a voucher for this reason. Nor will the YHA delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the YHA cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, the YHA will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family’s current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

### **Voucher Issuance**

When a family moves into its jurisdiction under portability, the YHA is required to issue the family a voucher [24 CFR 982.355(b)(6)]. The family must submit a request for tenancy

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approval to the YHA during the term of the YHA's voucher and any extensions [24 CFR 982.355(c)(6)].

### **Timing of Voucher Issuance**

HUD expects the YHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the YHA, and the family complies with the YHA's procedures [Notice PIH 2004-12].

#### YHA Policy

When a family ports into its jurisdiction, the YHA will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with the YHA's procedures. The YHA will update the family's information when verification has been completed.

### **Voucher Term**

The term of the YHA's voucher may not expire before the term of the initial PHA's voucher [24 CFR 982.355(c)(6)].

#### YHA Policy

The YHA's voucher may not expire before 30 calendar days has passed from the expiration of the initial PHA's voucher.

### **Voucher Extensions [24 CFR 982.355(c)(6), Notice 2004-12]**

The YHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the YHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

#### YHA Policy

The YHA will extend the term of the voucher to comply with the regulations and will address issues to an incoming portable family. In other cases, if the YHA plans to absorb the family into its own program, YHA will follow the policies on voucher extension set forth in section 5-II.E.

The YHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

The YHA will provide for tolling in accordance with the regulations for the period of processing the RFTA.

### **Portability-Receiving PHA Responsibilities: Part II of Form HUD-52665**

The receiving PHA sends Part II of Form HUD-52665 to the initial PHA. If the receiving PHA will bill the initial PHA, the receiving PHA not only completes Part II of the Form HUD-52665, but also attaches a copy of the new Form HUD-50058 before returning it to the initial PHA. The

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instructions of the Form HUD-52665 provide that the receiving PHA must complete and mail (which may include electronic mail or fax) Part II of the form within 10 working days from the date a HAP contract is executed on behalf of a family but no later than 60 days following the expiration date of the family voucher issued by the initial PHA.

**The initial PHA is generally not obligated to honor initial billings that are not completed and mailed by the receiving PHA within 10 working days after the date the HAP contract is executed.** (Note that it is the date the HAP contract is executed, not the effective date of the HAP contract, which is at issue. For instance, if a PHA executes a HAP contract within 60 days of the approval of the unit, the HAP contract may be retroactive to the date the unit was approved. It is the date the PHA executed the contract, not the retroactive effective date of the contract, that establishes the deadline by which the initial billing must be mailed, emailed or faxed.) The initial PHA must immediately inform the receiving PHA in writing of its decision not to accept the late billing submission. A receiving PHA that failed to send the initial billing within 10 working days following the date the HAP contract is executed is generally required to absorb the family into its own program unless the initial PHA is willing to accept the late submission.

#### **Portability-Timing of the Initial and Subsequent Billing Payments**

The initial PHA must pay the first billing amount due within 30 calendar days of receipt of Part II of the Form HUD-52665. Subsequently, the initial PHA must make payment each month the billing arrangement is in effect **no later than the fifth working day of each month.** The payment must be provided in a form and manner that the receiving PHA is able and willing to accept.

In many cases billing difficulties simply result from miscommunications and the PHAs involved are able to resolve the problem with HUD's assistance. HUD encourages PHAs to work cooperatively to resolve billing difficulties. However, it is ultimately the responsibility of the initial PHA to make billing payments in a timely manner.

The program regulations at 24 CFR 982.355(f)(1) provide that HUD may transfer funds for assistance to portable families to the receiving PHA from funds available under the initial PHA ACC. Upon request of the receiving PHA, HUD will exercise this authority to transfer baseline units and funding from the budget authority of the initial PHA to the receiving PHA in cases where the initial PHA fails to comply with the initial and subsequent monthly billing due dates described above (see section 12 of this notice for further information on the process by which units and funding may be transferred as a result of non-compliance with billing due dates).

The initial PHA may not terminate or delay making payments under existing billing arrangements as a result of over-leasing or funding shortfalls in the initial PHA's program. PHAs may only terminate HAP contracts as the result of insufficient funding in accordance with 24 CFR 982.454 to which they are a party.

#### **Portability-Receiving PHA: On-going Responsibilities**

The receiving PHA must send the initial PHA a copy of the updated Form HUD-50058 at each annual recertification for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount. The Form HUD-50058 should be sent to the initial PHA as soon as the family's annual reexamination is

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complete but no later than 10 working days following the effective date of the annual reexamination. The purpose of this notification is to serve as an annual “reconciliation” to assist both PHAs in fulfilling its accounting and record-keeping responsibilities.

**Annual Reexamination.** The YHA must send the initial PHA a copy of a portable family’s updated form HUD-50058 after each annual reexamination for the duration of time the YHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

#### YHA Policy

The YHA will send a copy of the updated HUD-50058 by fax or email and regular mail at the same time the participant and owner are notified of the reexamination results.

**Change in Billing Amount.** The YHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount.

#### **Failure to Fulfill Obligations**

Should the initial PHA fail to receive an updated Form HUD-50058 within 30 days after the effective date of the annual recertification date, it must send a letter to the receiving PHA to verify the status of the family and a copy of the letter must be sent to the Director (or the staff person designated by the Director) of the Office of Public Housing (OPH) in the HUD Area Office with jurisdiction over the initial PHA. If the receiving PHA fails to correct the problem within 30 days following the notification (e.g., initial PHA informs receiving PHA of late annual billing paperwork June 15<sup>th</sup> and the paperwork is not received by July 15<sup>th</sup>), the initial PHA may request by memorandum to the Director of the OPH with jurisdiction over the initial PHA that HUD require the receiving PHA to absorb the vouchers in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. A copy of the memorandum must be sent to the receiving PHA. The initial PHA must continue to make the monthly payment to the receiving PHA until instructed otherwise by the HUD Area Office.

The OPH will notify the receiving PHA (and the OPH director in the HUD Area Office with jurisdiction over the receiving PHA) within 15 working days of receiving the initial PHA memorandum requesting the absorption of units. The OPH will provide the receiving PHA with

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15 working days to respond and provide any supporting documentation if the receiving PHA is contesting whether the paper in question was late. The OPH in the HUD Area Office with jurisdiction over the initial PHA is the lead HUD office in resolving any dispute over the timeliness of the annual submission. That office is responsible for examining all documentation submitted by the PHAs and then determining if the paperwork was late if the receiving PHA contests the initial PHA's report. The OPH must render a decision no later than 15 working days following the deadline by which the receiving PHA had to respond to the OPH memorandum.

The OPH will send a letter to both the initial and receiving PHAs with copies to the Area Office with jurisdiction over the receiving PHA indicating whether the vouchers should be absorbed by the receiving PHA. If the vouchers are to be absorbed by the receiving PHA, the billing arrangement on behalf of the family or families in question ceases at the first of the following month after the date of the OPH letter (e.g., if the OPH letter is dated June 15, the billing arrangement ends July 1). The initial PHA is still responsible for any outstanding payments due to the receiving PHA.

HUD may in certain instances require the initial PHA to honor a late submission of the annual recertification documents (such as where the receiving PHA is over-leased and is in danger of not being able to stay under unit months available for the Calendar Year). In such a case HUD may take action to address the receiving PHA's failure to submit the notification in a timely manner, which may include reducing the receiving PHA's administrative fee.

The receiving PHA is also required to send a new Form HUD-52665 along with the Form HUD-50058 to report any change in the billing amount, if applicable. The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. However, under no circumstances should the notification be later than 10 working days following the effective date of the change in the billing amount.

**If the receiving PHA fails to send the Form HUD-52665 within 10 working days following the effective date of the change in the billing amount, the initial PHA is not responsible for paying any increase in the monthly billing amount incurred prior to the notification.**

If the receiving PHA is absorbing a family for which it has been billing or if the housing assistance payments are terminated for any reason, the receiving PHA is encouraged to provide adequate notice of the effective date of the absorption or termination to avoid having to return a payment. In any event the receiving PHA **must** notify the initial PHA no later than 10 working days following the effective date of the termination of the billing arrangement. The receiving PHA may not retroactively absorb families for which the receiving PHA was previously billing for any time period that commences before 10 working days from the time the receiving PHA notifies the initial PHA of the absorption, with one exception. If a PHA is experiencing a funding shortfall and needs to take steps to avoid terminations of assistance allows a receiving PHA to retroactively absorb families for which the receiving PHA was previously billing if the receiving PHA and the initial PHA agree. In these cases, the receiving PHA reimburses the initial PHA for payments made back to the effective date of the absorption but only for the current calendar year.

In the case where a family currently under a billing arrangement subsequently decides it wants to move under portability to yet another jurisdiction, the receiving PHA does not issue the family a

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voucher in order to do so. Instead, the receiving PHA notifies the initial PHA of the family request to port to another jurisdiction. The initial PHA is responsible for issuing the family's voucher and sending the Form HUD-52665 and supporting documentation to the new receiving PHA. Good communication between all three PHAs is very important in such a circumstance.

### **Portability-Summary of Portability Billing Deadlines**

The following summarizes the relevant deadlines under the portability billing procedures.

- a. **Submission of Initial Billing Amount (Part II of the Form HUD- 50058)** – Receiving PHA must complete and mail initial billing notice (1) no later than 10 working days following the date the HAP contract was executed and (2) in time that it will be received no later than 60 days following the expiration date of the family's voucher and extensions issued by the initial PHA or receiving PHA.
- b. **Payment of First Billing Amount** – Initial PHA makes payment within 30 days of receipt of Part II of the Form HUD 50058 indicating billing amount.
- c. **Payment of Subsequent Billing Amounts** – The initial PHA is responsible for ensuring that subsequent billing amounts are received no later than the fifth working day of each month for which the monthly billing amount is due.
- d. **Notification of Change in Billing Amount or Other Action** – The receiving PHA notifies the initial PHA of any change in the billing amount as soon as possible (preferably before the effective date to avoid retroactive adjustments) but in no circumstance any later than 10 working days following the effective date of the change.

## **10-II.D. OTHER PORTABILITY CONDITIONS**

### **Portability-Procedures for the Transfer of Units and Funding as a Result of Late Payments**

In the case where the initial PHA fails to make the monthly payment to the receiving PHA by the fifth working day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family or families, the total billing payment that was late or has yet to be paid, and the date the payment was ultimately received (if received at all). A copy of the notification must be sent to the Director (or the staff person designated by the Director) of the Office of Public Housing (OPH) in the HUD Area Office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification (e.g., receiving PHA informs of late payment in June and the August payment is late), the receiving PHA may request by memorandum to the Director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit or units and funding in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. A copy of the memorandum must be sent to the initial PHA.

The OPH will notify the initial PHA (and the OPH director in the HUD Area Office with jurisdiction over the initial PHA) within 15 working days of receiving the receiving PHA's memorandum requesting the transfer of units and funds. The OPH will provide the initial PHA with 15 working days to respond and provide any supporting documentation if the initial PHA is

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contesting whether the billing payments in question were late. The OPH in the HUD Area Office with jurisdiction over the receiving PHA is the lead HUD office in resolving any dispute over the timeliness of the billing payments. That office is responsible for examining all documentation submitted by the PHAs and then determining if the billing payments were late if the initial PHA contests the receiving PHA's report. The OPH must render a decision no later than 15 working days following the deadline by which the initial PHA had to respond to the OPH memorandum.

If the OPH determines that the payments in question were late, the OPH will send a memorandum to the Housing Voucher Financial Management Division (with copies to the Area Office with jurisdiction over the initial PHA as well as to both PHAs) indicating the number of units to be permanently transferred from the initial PHA to the receiving PHA. The number will correspond with the number of families for which billing payments were late. Within 30 days of receiving the OPH memorandum recommending transfer of units and funds, HUD will reduce the baseline number of units and concomitant budget authority from the initial PHA's ACC and increase the baseline number of units and budget authority on the receiving PHA's ACC in order to adjust the PHA program size as a result of poor portability billing performance. HUD will use the revised baseline numbers to readjust the funding. The billing arrangement on behalf of the family or families in question ceases with the transfer of the unit, although the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

These transfer policies notwithstanding, failure to comply with the financial procedures required by HUD, including the billing and payment deadlines outlined above, may also result in the reduction of administrative fees.

#### **Portability-Penalties for the Receiving PHA's Failure to Inform the Initial PHA of the Termination of a Billing Arrangement in a Timely Manner**

If HUD determines that the receiving PHA has not notified the initial PHA that a billing arrangement has been terminated in a timely manner and has continued to accept payments from the initial PHA, HUD may reduce administrative fees for the receiving PHA.

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least 3 months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- The receiving PHA must return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, the receiving PHA must notify the Office of Public Housing in the HUD Area Office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

HUD may, in its discretion, take the following actions:

- Direct the PHA not to utilize their administrative fee reserve account in accordance with 24 CFR 982.155(b)(3).

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- Reduce the administrative fees for the receiving PHA by up to 10 percent of the monthly billing amount in question for each month that the billing payments continued after the billing arrangement was terminated, taking into consideration the circumstances of the particular case. The OPH in the HUD Area Office with jurisdiction over the receiving PHA will inform the PHA by letter of the amount of the sanction imposed as a result of the PHA's failure to promptly notify the initial PHA that the billing arrangement is terminated. The OPH must send a copy of the letter to the FMC and the FMD.
  - Further reduce the administrative fee if the receiving PHA does not promptly return the overpayment to the initial PHA.

This general policy does not in any way restrict the OPH Director from exercising additional remedial action in the event that the receiving PHA failed to notify initial PHAs that the billing arrangements have been terminated.

### **Denying Family Requests to Move**

A PHA may only deny a family's request to move if it has grounds to do so under the program regulations, which are as follows:

- 1) The PHA has grounds to deny the move because of the family's action or failure to act as described in 24 CFR 982.552 or 982.553.
- 2) The family is a non-resident applicant, or the family was a non-resident applicant that has not yet been assisted in the initial PHA jurisdiction for twelve months since being admitted to the program (see 24 CFR 982.353(c)).
- 3) The family is an applicant and is not income-eligible (see 24 CFR 982.353(d)(1)) in the area in which they wish to initially lease a unit.
- 4) The PHA has established policies on the timing and frequency of moves in accordance with 24 CFR 982.314(c)(2), and the requested move does not comply with those policies.
- 5) The PHA does not have sufficient funding for continued assistance to support the move in accordance with 24 CFR 982.314(e)(1).

In addition, the voucher regulations at 24 CFR 982.353(b) further provide that the initial PHA must deny a family's request to move if the family has moved out of its assisted unit in violation of the lease. However, as previously noted in HUD Notice PIH 2007-5, the Violence Against Women and Justice Department Reauthorization Act 2013 (VAWA 2013) amended section 8(r) of the U.S. Housing Act to provide an exception to the prohibition against a family moving under the portability provisions in violation of the lease. VAWA 2013 provides that the family may receive a voucher and move in violation of the lease under the portability procedures if the family has complied with all other obligations of the voucher program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.

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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.

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## **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.

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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.

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## 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.

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YHA waiver requests should, at a minimum, include the calculation used to arrive at the projected shortfall in funding and cost-savings measures the YHA has already taken or will take in the future.

YHA requests for approval of payment standards below 90 percent of the fair market rent (FMR) for any unit size may be approved by HUD field offices. However, 24 CFR 982.503(d) states that HUD will not approve such payment standard amounts if the family share for more than 40 percent of voucher participants exceeds 30 percent of monthly adjusted income. This is a regulatory, not statutory, requirement. PHAs experiencing financial difficulties may request that HUD Headquarters waive this requirement for good cause, such as the inability of a PHA to avoid terminating the HAP contracts of current participants or withdrawing vouchers from families searching for housing without the proposed reduction in payment standards. Waiver requests should include an analysis by YHA on the impact the reduction in payment standards below the basic range will have on a family's opportunity to lease units throughout YHA's jurisdiction.

In determining whether to approve YHA requests for payment standard waivers of 24 CFR 982.503(d) or 982.505(c)(3), HUD will review and take into consideration YHA's current rent burden and the impact of the proposed change on YHA's participants. In addition, as a condition of the waiver approval, HUD may require YHA to raise payment standards and apply the new payment standard amounts immediately at such time that YHA receives additional funding.

### **Termination of Assistance Due to Insufficient Funding**

The regulation at 24 CFR 982.454 provides that YHA may terminate HAP contracts, in accordance with HUD requirements, if YHA determines that funding under the CACC is insufficient to support continued assistance for families in the program.

In determining if funding under the CACC is insufficient to support continued assistance for families in the program, YHA **must** take into consideration its available budget authority (which includes unspent prior year HAP funds in YHA's NRA account).

Before terminating HAP contracts on the basis of insufficient funding, the YHA must ensure that it has carefully considered all cost-savings measures and the impact such terminations will likely have on program applicants and participants. In addition, YHA is encouraged to utilize alternative sources of unrestricted non-Federal funding that may be available to prevent the termination of rental assistance. **YHA must notify the HUD field office and its financial analyst at the Financial Management Center (FMC) prior to termination actions due to insufficient funding.**

YHA termination policies due to insufficient funding must be included in the administrative plan. Such policies should describe how YHA will determine which HAP contracts will be terminated. Any YHA policies with respect to the resumption of assistance for the impacted families must also be included in the administrative plan. In setting such policies, YHA should

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be mindful of its obligation to affirmatively further fair housing pursuant to 24 CFR 982.53(c) and 24 CFR 903.7 (o).

### **Reasonable Accommodations**

Notwithstanding YHA's adoption of policies noted above to deny portability or moves within YHA's jurisdiction or revision of payment or subsidy standards, reasonable accommodation requests for a person's disability must still be evaluated in accordance with HUD's Section 504 implementing regulations at 24 CFR part 8. Such requests must be granted when an accommodation may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling, unless it would impose an undue financial and administrative burden on YHA or fundamentally alter the nature of YHA's operations.

## **PART III: INFORMAL REVIEWS AND HEARINGS**

### **16-III.A. OVERVIEW**

When YHA makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing.

YHA is required to include in the administrative plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d)(12) and (13)].

### **16-III.B. INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a "minimum hearing requirement" [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

#### **Decisions Subject to Informal Review**

YHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the YHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures
- For victims of domestic violence covered by VAWA

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by YHA

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- General policy issues or class grievances
  - A determination of the family unit size under YHA's subsidy standards
  - A YHA determination not to grant approval of the tenancy
  - A YHA determination that the unit is not in compliance with the HQS
  - A YHA determination that the unit is not in accordance with the HQS due to family size or composition

#### YHA Policy

YHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on YHA's waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

#### **Notice to the Applicant [24 CFR 982.554(a)]**

YHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for YHA's decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

#### **Scheduling an Informal Review**

##### YHA Policy

A request for an informal review must be made in writing and delivered to YHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of YHA's denial of assistance.

YHA must schedule and send written notice of the informal review within 10 business days of the family's request.

#### **Informal Review Procedures [24 CFR 982.554(b)]**

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to present written or oral objections to the decision of YHA.

The person conducting the review will make a recommendation to YHA, but YHA is responsible for making the final decision as to whether assistance should be granted or denied.

#### **Informal Review Decision [24 CFR 982.554(b)]**

YHA must notify the applicant of the YHA's final decision, including a brief statement of the reasons for the final decision.

##### YHA Policy

In rendering a decision, YHA will evaluate the following matters:

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Whether or not the grounds for denial were stated factually in the Notice.

The validity of grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.

The validity of the evidence. YHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, YHA will uphold the decision to deny assistance.

If the facts prove the grounds for denial, and the denial is discretionary, YHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

YHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

### **16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]**

YHA must offer an informal hearing for certain YHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to YHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether YHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and YHA policies.

YHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed.

Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

#### **Decisions Subject to Informal Hearing**

Circumstances for which YHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from YHA's utility allowance schedule

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- A determination of the family unit size under YHA's subsidy standards
  - A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the YHA's subsidy standards, or YHA's determination to deny the family's request for exception from the standards
  - A determination to terminate assistance for a participant family because of the family's actions or failure to act
  - A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under YHA policy and HUD rules
  - A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]
  - A determination that the family is an ineligible student under the student rule provisions
  - A determination that the family is not protected under the VAWA requirements.

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by YHA
- General policy issues or class grievances
- Establishment of YHA's schedule of utility allowances for families in the program
- A YHA determination not to approve an extension or suspension of a voucher term
- A YHA determination not to approve a unit or tenancy
- A YHA determination that a unit selected by the applicant is not in compliance with the HQS
- A YHA determination that the unit is not in accordance with HQS because of family size
- A determination by YHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

#### YHA Policy

YHA will only offer participants the opportunity for an informal hearing when required by the regulations.

#### **Informal Hearing Procedures**

##### ***Notice to the Family* [24 CFR 982.555(c)]**

When YHA makes a decision that is subject to informal hearing procedures, YHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, YHA must notify the family that if they do not agree with the decision, they may request an informal hearing on the decision.

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For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to YHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

YHA Policy

In cases where YHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

The proposed action or decision of YHA.

A brief statement of the reasons for the decision including the regulatory reference.

The date the proposed action will take place.

A statement of the family's right to an explanation of the basis for YHA's decision.

A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.

A deadline for the family to request the informal hearing.

To whom the hearing request should be addressed.

A copy of YHA's hearing procedures

That persons with disabilities have the right to request a reasonable accommodation.

***Scheduling an Informal Hearing [24 CFR 982.555(d)]***

When an informal hearing is required, YHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

YHA Policy

A request for an informal hearing must be made in writing and delivered to YHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of YHA's decision or notice to terminate assistance.

YHA must schedule and send written notice of the informal hearing to the family within 10 business days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, YHA may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact YHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. YHA will

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reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

***Pre-Hearing Right to Discovery [24 CFR 982.555(e)]***

Participants and YHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any YHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If YHA does not make the document available for examination on request of the family, YHA may not rely on the document at the hearing.

YHA's hearing procedures provide that YHA must be given the opportunity to examine at YHA offices before the hearing, any family documents that are directly relevant to the hearing. YHA must be allowed to copy any such document at YHA's expense. If the family does not make the document available for examination on request of YHA, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

YHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of YHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date

YHA must be given an opportunity to examine at YHA offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, YHA will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 24 hours before the scheduled hearing date.

***Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]***

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

***Informal Hearing Officer [24 CFR 982.555(e)(4)]***

Informal hearings will be conducted by a person or persons approved by YHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

YHA Policy

YHA has designated the following to serve as hearing officers:

Designated YHA staff that are not subordinate to the person making the initial decision, but are knowledgeable of the program requirements.

***Attendance at the Informal Hearing***

YHA Policy

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Hearings may be attended by a hearing officer and the following applicable persons:

A YHA representative(s) and any witnesses for YHA

The participant and any witnesses for the participant

The participant's counsel or other representative

Any other person approved by YHA as a reasonable accommodation for a person with a disability

### ***Conduct at Hearings***

The person who conducts the hearing may regulate the conduct of the hearing in accordance with YHA's hearing procedures [24 CFR 982.555(4)(ii)].

### **YHA Policy**

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

### ***Evidence [24 CFR 982.555(e)(5)]***

YHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

### **YHA Policy**

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

**Oral evidence:** the testimony of witnesses

**Documentary evidence:** a writing which is relevant to the case, for example, a letter written to YHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Evidence, including hearsay, is generally admissible.

If either YHA or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

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Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

***Hearing Officer's Decision [24 CFR 982.555(e)(6)]***

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing decision must be furnished promptly to the family.

**YHA Policy**

In rendering a decision, the hearing officer will consider the following matters:

**YHA Notice to the Family:** The hearing officer will determine if the reasons for YHA's decision are factually stated in the Notice.

**Discovery:** The hearing officer will determine if YHA and the family were given the opportunity to examine any relevant documents in accordance with YHA policy.

**YHA Evidence to Support YHA's Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support YHA's conclusion.

**Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and YHA policies. If the grounds for termination are not specified in the regulations or in compliance with YHA policies, then the decision of YHA will be overturned.

The hearing officer will issue a written decision to the family and YHA no later than 10 business days after the hearing. The decision will be sent via first class regular mail. The report will contain the following information:

**Hearing information:**

- Name of the participant;
- Date, time and place of the hearing;
- Name of the hearing officer;
- Name of the YHA representative; and
- Name of family representative (if any).

**Background:** A brief, impartial statement of the reason for the hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which

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is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold YHA's decision.

**Order:** The hearing report will include a statement of whether YHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct YHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct YHA to restore the participant's program status.

### ***Procedures for Hearing Extension***

#### **YHA Policy**

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of YHA will take effect and another hearing will not be granted.

Within 10 business days after the date of the hearing officers report is mailed to YHA and tenant, the HCV participant may request a rehearing or further hearings. Requests must be post marked or hand delivered within the 10 business day period. The request must demonstrate a cause for a rehearing, including specific reasons why the rehearing should be granted including references to the hearing officers report.

It is the sole discretion of YHA whether to grant or deny a rehearing.

#### ***YHA Notice of Final Decision [24 CFR 982.555(f)]***

YHA is not bound by the decision of the hearing officer for matters in which YHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to Federal, State or local laws.

If YHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, YHA must promptly notify the family of the determination and the reason for the determination.

#### **YHA Policy**

YHA will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This Notice will be sent by first-class mail. A copy of the "Notice of Final Decision" will be maintained in YHA's file.

YHA is not bound by hearing decisions:

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- Concerning matters in which YHA is not required to provide an opportunity for a hearing;
  - Contrary to HUD regulations or requirements;
  - Contrary to Federal, State or local laws;
  - That exceed the authority of the person conducting the hearing.

YHA shall send a letter to the participant if it determines YHA is NOT bound by the Hearing Officer's determination within 10 business days. The letter shall include YHA's reasons for the decision.

#### **16-III.D. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while YHA's hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or YHA's informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

#### **Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

As discussed in Chapters 3 and 11, the notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with YHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

#### **USCIS Appeal Process [24 CFR 5.514(e)]**

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When YHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, YHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide YHA with a copy of the written request for appeal and the proof of mailing.

#### YHA Policy

YHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide YHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to YHA, of its decision. When the USCIS notifies YHA of the decision, YHA must notify the family of its right to request an informal hearing.

#### YHA Policy

YHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

#### **Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that YHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of YHA's notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

#### ***Informal Hearing Officer***

YHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

#### ***Evidence***

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of YHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

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YHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of YHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by YHA, and to confront and cross-examine all witnesses on whose testimony or information YHA relies.

***Representation and Interpretive Services***

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or YHA, as may be agreed upon by the two parties.

***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. YHA may, but is not required to provide a transcript of the hearing.

YHA Policy

YHA will not provide a transcript of an audio taped hearing.

***Hearing Decision***

YHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

**Informal Hearing Procedures for Residents [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that YHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of YHA's notice of termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

**Retention of Documents [24 CFR 5.514(h)]**

YHA must retain for a minimum of 5 years the following documents that may have been submitted to YHA by the family, or provided to YHA as part of the USCIS appeal or YHA's informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form

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- The USCIS verification results
  - The request for a USCIS appeal
  - The final USCIS determination
  - The request for an informal hearing
  - The final informal hearing decision

## **PART IV: OWNER OR FAMILY DEBTS TO YHA**

### **16-IV.A. OVERVIEW**

YHA is required to include in the administrative plan, policies concerning repayment by a family of amounts owed to YHA [24 CFR 982.54]. This part describes YHA's policies for recovery of monies that have been overpaid on behalf of families, or to owners.

#### YHA Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, YHA holds the owner or participant liable to return any overpayments to YHA.

YHA may enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments. A repayment agreement may be executed depending on the type of fraud and the amount of monies owed to YHA.

When an owner or participant refuses to repay monies owed to YHA, YHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil law suit
- State income tax set-off program
- Office of the Inspector General
- Office of the Attorney General

### **16-IV.B. REPAYMENT POLICY**

#### **Owner Debts to YHA**

#### YHA Policy

Any amount due to YHA by an owner must be repaid by the owner within 30 days of YHA's determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, YHA will withhold the future HAP payments by the amount owed until the debt is paid in full.

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If the owner is not entitled to future HAP payments, YHA may offer to enter into a repayment agreement in accordance with the policies below.

If the owner refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, YHA will sanction the owner from future participation in the program and pursue other modes of collection.

### **Family Debts to YHA**

#### YHA Policy

Any amount due to YHA by an HCV participant must be repaid by the family. If the family is unable to repay the debt within 30 days, YHA may offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, YHA will terminate the assistance upon notification to the family and pursue other modes of collection.

### **Repayment Agreement [24 CFR 792.103]**

The term *repayment agreement* refers to a formal document signed by a tenant or owner and provided to YHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

### **Repayment Agreement Guidelines**

#### YHA Policy

A Payment Agreement, as used in this Plan, is a document entered into between YHA and a person who owes a debt to YHA. It is similar to a promissory note, but contains more details regarding the nature of the debt, the terms of payment, any special provisions of the agreement, and the remedies available to YHA upon default of the agreement.

- Amounts between \$2,000 and \$2,999 must be repaid within 18 months.
- Amounts between \$1,000 and \$1,999 must be repaid within 12 months.
- Amounts under \$1,000 must be repaid within 6 months.

### ***Execution of the Agreement***

#### YHA Policy

The head of household and spouse/co-head (if applicable) and YHA must sign the repayment agreement.

### ***Due Dates***

#### YHA Policy

All payments are due by the close of business on the 5<sup>th</sup> day of the month. If the 5<sup>th</sup> does not fall on a business day, the due date is the close of business on the first business day after the 5<sup>th</sup>.

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***Non-Payment***

**YHA Policy**

A payment will be considered to be in arrears if:

- **The payment has not been received by the close of the business day on which the payment was due. If the due date is on a weekend or holiday, the due date will be at the close of the next business day.**

If the family's payment agreement is in arrears for two consecutive months, YHA will:

- **Terminate tenancy**

If the family requests a transfer to another unit or program and has a payment agreement in place and the payment agreement is not in arrears:

- **The family will be required to pay the balance in full prior to the transfer.**

**Payment Schedule for Monies Owed to YHA**

There are some circumstances in which YHA will not enter into a payment agreement. They are:

- If the family already has a payment agreement in place.
- If YHA determines that the family has committed program fraud.

**Guidelines for Payment Agreements**

Payment agreements will be executed between YHA and the head of household only.

Monthly payments may be decreased in cases of hardship with the prior notice of the family, verification of the hardship. However, maximum time of 24 months will not be extended.

No transfer will be approved until the debt is paid in full unless the transfer is the result of the following causes, and the payment agreement is current:

- A natural disaster

**Additional Monies Owed**

If the family has a payment agreement in place and incurs an additional debt to YHA:

YHA will not enter into more than one payment agreement at a time with the same family.

***No Offer of Repayment Agreement***

**YHA Policy**

YHA will not enter into a repayment agreement if there is already a repayment agreement in place with the family or owner, or the amounts owed by the family or owner exceed the Federal or State threshold for criminal prosecution. *Note: If a family has entered into a previous repayment agreement, YHA will continue housing assistance if the family pays the balance within 30 days of notification of the retroactive rent assessment.*

**If the family refuses to sign a Repayment Agreement for changes it was required to report and didn't, it will be considered fraud.** In this case, YHA would terminate

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assistance for fraud, as long as the amount was verified. YHA may also consider local prosecution and, if the amount is \$10,000 or over, forward the case to the Regional Inspector General for Investigation.

If the family's assistance is terminated and repayment has not been made, the money will be considered to be owed and YHA may take action to collect the amounts owed.

YHA shall enter into the HUD database if any family has violated the conditions of the program and YHA has issue an EOP on the family. Any balance owed will be entered into the database (EIV)

## **PART V: MANAGEMENT ASSESSMENT (SEMAP)**

### **16-V.A. OVERVIEW**

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure YHA's performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect YHA in several ways.

- High-performing PHA can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- PHA with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].
- PHA with an overall rating of "troubled" are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHA that are designated "troubled" may not use any part of the administrative fee reserve for other housing purposes [24 CFR 985.107].
- HUD may determine that a PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR 985.109].

### **16-V.B. SEMAP CERTIFICATION [24 CFR 985.101]**

YHA must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by YHA's board resolution and signed by YHA's executive director. If the YHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

A PHA with less than 250 voucher units are only required to be assessed every other PHA fiscal year. HUD will assess such PHA annually if the PHA elects to have its performance assessed on an annual basis; or is designated as "troubled" [24 CFR 985.105].

Failure of YHA to submit its SEMAP certification within the required time frame will result in an overall performance rating of "troubled."

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YHA's SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of the YHA's SEMAP certification, HUD will rate the YHA's performance under each SEMAP indicator in accordance with program requirements.

### **HUD Verification Method**

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. YHA or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module in the PIH Information Center (PIC), and HUD determines that those data are insufficient to verify YHA's certification on the indicator due to YHA's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

### **16-V.C. SEMAP INDICATORS [24 CFR 985.3 and form HUD-52648]**

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.

A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not be rated under SEMAP indicators 1-7.

<b>SEMAP Indicators</b>
<p><b>Indicator 1: Selection from the waiting list</b> <b>Maximum Score: 15</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list.</li><li>• Points are based on the percent of families that are selected from the waiting list in accordance with the PHA's written policies, according to the PHA's quality control sample.</li></ul>
<p><b>Indicator 2: Rent reasonableness</b> <b>Maximum Score: 20</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units</li><li>• Points are based on the percent of units for which the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the PHA's quality control sample.</li></ul>
<p><b>Indicator 3: Determination of adjusted income</b> <b>Maximum Score: 20</b></p>

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<ul style="list-style-type: none"><li>• This indicator measures whether the PHA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent.</li><li>• Points are based on the percent of files that are calculated and verified correctly, according to the PHA's quality control sample.</li></ul>
<p><b>Indicator 4: Utility allowance schedule</b> <b>Maximum Score: 5</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA maintains an up-to-date utility allowance schedule.</li><li>• Points are based on whether the PHA has reviewed the utility allowance schedule and adjusted it when required, according to the PHA's certification.</li></ul>
<p><b>Indicator 5: HQS quality control inspections</b> <b>Maximum Score: 5</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether a PHA supervisor reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.</li><li>• Points are based on whether the required quality control reinspections were completed, according to the PHA's certification.</li></ul>
<p><b>Indicator 6: HQS enforcement</b> <b>Maximum Score: 10</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.</li><li>• Points are based on whether the PHA corrects all HQS deficiencies in accordance with required time frames, according to the PHA's certification.</li></ul>
<p><b>Indicator 7: Expanding housing opportunities</b> <b>Maximum Points: 5</b></p> <ul style="list-style-type: none"><li>• Only applies to PHA with jurisdiction in metropolitan FMR areas.</li><li>• This indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside the PHA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration.</li><li>• Points are based on whether the PHA has adopted and implemented written policies in accordance with SEMAP requirements, according to the PHA's certification.</li></ul>
<p><b>Indicator 8: FMR limit and payment standards</b> <b>Maximum Points: 5 points</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.</li><li>• Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA's certification.</li></ul>

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**Indicator 9: Annual reexaminations**

**Maximum Points: 10**

- This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.

**Indicator 10: Correct tenant rent calculations**

**Maximum Points: 5**

- This indicator shows whether the PHA correctly calculates the family's share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

**Indicator 11: Pre-contract HQS inspections**

**Maximum Points: 5**

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

**Indicator 12: Annual HQS inspections**

**Maximum Points: 10**

- This indicator shows whether the PHA inspects each unit under contract at least annually.
- Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.

**Indicator 13: Lease-up**

**Maximum Points: 20 points**

- This indicator shows whether the PHA enters HAP contracts for the number of units or funding reserved under ACC for at least one year.
- Points are based on the percent of units leased during the last completed PHA fiscal year, or the percent of allocated budget authority that has been expended by the PHA, according to data from the PHA's last year-end operating statement that is recorded in HUD's accounting system.

**Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances**

**Maximum Points: 10**

- Only applies to PHA with mandatory FSS programs.
- This indicator shows whether the PHA has enrolled families in the FSS program as required, and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.
- Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

**Success Rate of Voucher Holders**

**Maximum Points: 5**

- Only applies to PHA that have received approval to establish success rate payment

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standard amounts, and isn't effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.

- This indicator shows whether voucher holders were successful in leasing units with voucher assistance.
- Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.

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**Deconcentration Bonus Indicator**

**Maximum Points: 5**

- Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50 percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMR set at the 50<sup>th</sup> percentile.
- Additional points are available to PHA that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points.

**PART VI: RECORD KEEPING**

**16-VI.A. OVERVIEW**

YHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, YHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

**16-VI.B. RECORD RETENTION [24 CFR 982.158]**

During the term of each assisted lease, and for at least three years thereafter, YHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, YHA must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;

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- Lead-based paint records as required by 24 CFR 35, Subpart B.
  - Accounts and other records supporting YHA's budget and financial statements for the program;
  - Records to document the basis for YHA's determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
  - Other records specified by HUD.

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

## **16-VI.C. RECORDS MANAGEMENT**

YHA must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

### YHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized YHA staff.

YHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

### **Privacy Act Requirements [24 CFR 5.212 and Form-9886]**

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or YHA may release the information collected.

### **Upfront Income Verification (UIV) Records**

YHA that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in *Enterprise Income Verification (EIV) System PHA Security Procedures*.

### YHA Policy

YHA has adopted and implemented EIV security procedures as required by HUD.

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### **Criminal Records**

YHA may only disclose the criminal conviction records which YHA receives from a law enforcement agency to officers or employees of YHA, or to authorized representatives of YHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

YHA must establish and implement a system of records management that ensures that any criminal record received by YHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to YHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

YHA must establish and implement a system of records management that ensures that any sex offender registration information received by YHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to YHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by YHA other than under 24 CFR 5.905.

### **Medical/Disability Records**

YHA is not permitted to inquire about the nature or extent of a person's disability. YHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If YHA receives a verification document that provides such information, YHA should not place this information in the tenant file. YHA should destroy the document.

### **Specific Guidance on Protecting Sensitive Privacy Information**

The Privacy Act requires that federal agencies maintain only such information about individuals that is relevant and necessary to accomplish its purpose. The Privacy Act also requires that the information be maintained in systems or records – electronic and paper – that have the appropriate administrative, technical, and physical safeguards to protect the information, however current. This responsibility extends to contractors and third party business partners, such as YHA, who is required to maintain such systems of records by HUD.

- a) YHA should take the following steps to help ensure compliance with these requirements:
  - i) Limit Collection of PII
    - (1) Do not collect or maintain sensitive PII without proper authorization. Collect only the PII that is needed for the purposes for which it is collected.
  - ii) Manage Access to Sensitive PII

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- (1) Only share or discuss sensitive PII with those personnel who have a need to know for purposes of their work. Challenge anyone who asks for access to sensitive PII for which you are responsible.
  - (2) Do not distribute or release sensitive PII to other employees, contractors, or other third parties unless you are first convinced that the release is authorized, proper and necessary.
  - (3) When discussing sensitive PII on the telephone, confirm that you are speaking to the right person before discussing the information and inform him/her that the discussion will include sensitive PII.
  - (4) Never leave messages containing sensitive PII on voicemail.
  - (5) Avoid discussing sensitive PII if there are unauthorized personnel, contractors, or guests in the adjacent cubicles, rooms, or hallways who may overhear your conversations.
  - (6) Hold meetings in a secure space (i.e., no unauthorized access or eavesdropping possible) if sensitive PII will be discussed and ensure that the room is secured after the meeting.
  - (7) Treat notes and minutes from such meetings as confidential unless you can verify that they do not contain sensitive PII.
  - (8) Record the date, time, place, subject, chairperson, and attendees at any meeting involving sensitive PII.
- iii) Protect Hard Copy and Electronic Files Containing Sensitive PII
- (1) Clearly label all files containing sensitive PII by placing appropriate physical labels on all documents, removable media such as thumb drives, information systems, and application. Examples of appropriate labels might include —For Official Use Only|| or —For (Name of Individual/Program Office) Use Only.||
  - (2) Lock up all hard copy files containing sensitive PII in secured file cabinets and do not leave unattended.
  - (3) Protect all media (e.g., thumb drives, CDs, etc.) that contain sensitive PII and do not leave unattended. This information should be maintained either in secured file cabinets or in computers that have been secured.
  - (4) Keep accurate records of where PII is stored, used, and maintained.

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- (5) Periodically audit all sensitive PII holdings to make sure that all such information can be readily located.
  - (6) Secure digital copies of files containing sensitive PII. Protections include encryption, implementing enhanced authentication mechanisms such as two-factor authentication and limiting the number of people allowed access to the files.
  - (7) Store sensitive PII only on workstations that can be secured, such as workstations located in areas that have restricted physical access.
- iv) Protecting Electronic Transmissions of Sensitive PII via fax, email, etc.
- (1) When faxing sensitive PII, use the date stamp function, confirm the fax number, verify that the intended recipient is available, and confirm that he/she has received the fax. Ensure that none of the transmission is stored in memory on the fax machine, that the fax is in a controlled area, and that all paper waste is disposed of properly (e.g., shredded). When possible, use a fax machine that uses a secure transmission line.
  - (2) Before faxing PII, coordinate with the recipient so that the PII will not be left unattended on the receiving end.
  - (3) When faxing sensitive PII, use only individually-controlled fax machines, not central receiving centers.
  - (4) Do not transmit sensitive PII via an unsecured information system (e.g., electronic mail, Internet, or electronic bulletin board) without first encrypting the information.
  - (5) When sending sensitive PII via email, make sure both the message and any attachments are encrypted.
  - (6) Do not place PII on shared drives, multi-access calendars, the Intranet, or the Internet.
- v) Protecting Hard Copy Transmissions of Files Containing Sensitive PII
- (1) Do not remove records about individuals with sensitive PII from facilities where HUD information is authorized to be stored and used unless approval is first obtained from a supervisor. Sufficient justification, as well as evidence of information security, must be presented.
  - (2) Do not use interoffice or translucent envelopes to mail sensitive PII. Use sealable opaque solid envelopes. Mark the envelope to the person's attention.

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- (3) When using the U.S. postal service to deliver information with sensitive PII, double-wrap the documents (e.g., use two envelopes – one inside the other) and mark only the inside envelope as confidential with the statement —To Be Opened By Addressee Only.||

vi) Records Management, Retention and Disposition

- (1) Follow records management laws, regulations, and policies applicable within your jurisdiction.
- (2) Ensure all YHA locations and all entities acting on behalf of YHA are managing records in accordance with applicable laws, regulations, and policies.
- (3) Include records management practices as part of any scheduled oversight protocols.
- (4) Do not maintain records longer than required.
- (5) Destroy records after retention requirements are met.
- (6) Dispose of sensitive PII appropriately – use cross-cut shredders or burn bags for hard copy records and permanently erase (not just delete) electronic records.

vii) Incident Response

- (1) Supervisors should ensure that all personnel are familiar with reporting procedures.

YHA will promptly report all suspected compromises of sensitive PII related to HUD programs and projects to HUD’s National Help Desk at 1-888-297-8689.

## **PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

### **16-VII.A. OVERVIEW**

YHA has certain responsibilities relative to children with environmental intervention blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that YHA is subject to.

### **16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)]**

YHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

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YHA Policy

YHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

**16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]**

At least quarterly, YHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If YHA obtains names and addresses of environmental intervention blood lead level children from the public health department(s), YHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, YHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, YHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

YHA Policy

The public health department(s) has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, YHA is not providing such a report.

**PART VIII: DETERMINATION OF INSUFFICIENT FUNDING**

**16-VIII.A. OVERVIEW**

The HCV regulations allow YHA to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.314(e)(1) and 982.454]. Insufficient funding may also impact YHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology YHA will use to determine whether or not YHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

**16-VIII.B. METHODOLOGY**

YHA Policy

YHA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing the YHA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, YHA will add anticipated

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HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if YHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, YHA will be considered to have insufficient funding.

## **Chapter 17**

### **PROJECT-BASED VOUCHERS (PBV) AND RENTAL ASSISTANCE DEMONSTRATION UNITS (RAD)**

#### **PART I: PROJECT BASED-VOUCHERS**

##### **17.1.A.INTRODUCTION**

The Project-Based Voucher Program was enacted in 1998 as part of the Quality Housing and Work Responsibility Act (QHWRA), with substantial revisions under the FY 2001 Appropriations Act. Based on a proposed rule and public comment, HUD published the Final Rule on November 14, 2005 and amended the rule in July, 2014. Further guidelines for implementation are to be found in PIH Notices 2011-54, 2012-32 rev, 2013-11, 2014-17 and 2015-5.

The Program may be administered by Housing Authorities that already administer a Tenant-Based Voucher Program under an Annual Contributions Contract (ACC) with HUD. The significant difference between the programs is that assistance is “attached to the structure” in the Project-Based Program while assistance is considered “portable” in the Tenant-Based Program. Under HUD Regulations at 24 CFR 983, a Housing Authority may commit up to 20% of its budget authority under the ACC to Project-Based Vouchers. Under HOTMA, this has been increased to 30% under specific conditions. Participation is allowed at the discretion of the individual Housing Authority. No additional funding is provided by HUD for the administration of the Program.

The YHA will utilize this Program to further its mission of creating and preserving affordable housing in its jurisdiction. This chapter defines the procedures and the criteria for acceptance of units to the program. The administrative procedures are set for per the HUD Final Rule and PIH RAD Notices. The chapter also provides policy and regulatory differences between the Project-Based and Tenant-Based Voucher Programs that are significant for owners and participants.

The YHA will operate a project-based voucher (PBV) program with up to the maximum twenty percent (20%) of its Housing Choice Voucher Program budget authority. In addition, YHA will explore the opportunity to increase to 30% under the revised regulations, once HUD places them into final format. In the event HUD increases the level of allowed budget authority that may be used for PBV assistance, the YHA may increase the PBV program up to the maximum level allowed by HUD.

PBV program is subject to the regulations at 24 CFR part 983, which includes regulations governing policies and procedures that are not specified in this Administrative Plan.

In addition to the policies and procedures stated below, and other PBV regulations stated at 24 CFR part 983, YHA's PBV program is subject to most of the requirements of the Housing Choice Voucher Program, as specified in this Administrative Plan and in other HUD regulations.

**Description of the YHA PBV Program Commitment and Priorities** [24 CFR 983.5]

YHA's PBV program is designed to ensure that PBV assistance is used to support goals that could not be equally achieved through the use of tenant-based voucher assistance. YHA's PBV program is committed to the following priorities:

1. Expand the supply of affordable housing and increase the affordable housing choices of residents within the jurisdiction
2. Support projects which further revitalize neighborhoods, promote the deconcentration of poverty and generally provide increased housing and economic opportunities.
3. Work with the community to identify and serve populations with particular housing needs, including but not limited to the provision of supportive services to promote self-sufficiency and supportive housing for families with disabilities.
4. Preserve affordable housing stock in the community served by YHA

YHA will periodically issue a Request for Proposals (RFP) for the PBV Program to owners and developers of existing, newly constructed, or rehabilitated multi-family housing. The RFP and selection process will be administered in compliance with the YHA Procurement Policy. Sites will be selected according to the criteria set forth in this chapter of the YHA Administrative Plan.

YHA will enter into a one- to fifteen-year HAP contract with the owner(s) of existing housing or newly constructed or rehabilitated housing selected under the Program criteria. The YHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to 15 years if the YHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 15 years. YHA may provide for multiple extensions; however, in no circumstance may such extensions exceed 15 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the YHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations described in this paragraph. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the

extension. In the case of YHA-owned units, any extension of the initial term of the HAP contract shall be determined in accordance with §983.59

In the case of newly constructed or rehabilitated housing sites which are not completed prior to their selection by YHA, the development must be completed under an Agreement between the owner and the YHA. In the Agreement, YHA will agree to execute a HAP contract after the owner completes the construction or rehabilitation of the units according to HQS and the other standards set forth in the YHA PBV Program.

#### **17.1.B. WHEN THE TENANT-BASED VOUCHER APPLIES [24 CFR 983.2].**

24 CFR Part 982 is the basic regulation for the tenant-based voucher program. All of part 982 applies to the PBV program except for the following:

- (1) Provisions on issuance or use of a voucher;
- (2) Provisions on portability;
- (3) Provisions on the following special housing types: shared housing, cooperative housing, manufactured home space rental, and the homeownership option. YHA may not provide PBV program assistance to these types of housing (24 CFR 983.9)
- (4) Other exceptions as specified in 983.2.

#### **17.1.C. PBV DEFINITIONS [24 CFR 983.3]**

**Admission.** The point when the family becomes a participant in the YHA's tenant-based or project-based voucher program (initial receipt of tenant-based or project-based assistance). After admission, and so long as the family is continuously assisted with tenant-based or project-based voucher assistance from the YHA, a shift from tenant-based or project-based assistance to the other form of voucher assistance is not a new admission.

**Agreement to enter into HAP contract (Agreement).** The Agreement is a written contract between YHA and the owner in the form prescribed by HUD. The Agreement defines requirements for development of housing to be assisted under the Program. When the development is completed by the owner in accordance with the Agreement, YHA enters into a HAP contract with the owner. The Agreement is not used for existing housing assisted under this section. HUD will keep the public informed about changes to the Agreement and other forms and contracts related to this program through appropriate means.

**Comparable rental assistance.** A subsidy or other means to enable a family to obtain decent housing in YHA jurisdiction renting at a gross rent that is not more than 40 percent of the family's adjusted monthly gross income.

**Contract units.** The housing units covered by a HAP contract.

**Development.** Construction or rehabilitation of PBV housing after the proposal selection date.

**Excepted units.** Units in a multifamily building not counted against the 25 percent per-project cap. See §983.56(b)(2)(i).

**Existing housing.** Housing units that already exist on the proposal selection date and that substantially comply with the HQS on that date. (The units must fully comply with the HQS before execution of the HAP contract.)

**Household.** The family and any YHA-approved live-in aide.

**Housing assistance payment.** The monthly assistance payment for a PBV unit by YHA, which includes:

- (1) A payment to the owner for rent to owner under the family's lease minus the tenant rent; and
- (2) An additional payment to or on behalf of the family, if the utility allowance exceeds the total tenant payment, in the amount of such excess.

**Housing credit agency.** For purposes of performing subsidy layering reviews for proposed PBV projects, a housing credit agency includes a State housing finance agency, a State participating jurisdiction under HUD's HOME program (see 24 CFR part 92), or other State housing agencies that meet the definition of "housing credit agency" as defined by section 42 of the Internal Revenue Code of 1986.

**Housing quality standards (HQS).** The HUD minimum quality standards for housing assisted under the program. See 24 CFR 982.401.

**Lease.** A written agreement between an owner and a tenant for the leasing of a PBV dwelling unit by the owner to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the YHA.

**Multifamily building.** A building with five or more dwelling units (assisted or unassisted).

**Newly constructed housing.** Housing units that do not exist on the proposal selection date and are developed after the date of selection pursuant to an Agreement between YHA and owner for use under the PBV program.

**YHA-owned unit.** A dwelling unit owned by YHA that administers the voucher program. YHA-owned means that YHA or its officers, employees, or agents hold a direct or indirect interest in the building in which the unit is located, including an interest as titleholder or lessee, or as a stockholder, member or general or limited partner, or member of a limited liability corporation, or an entity that holds any such direct or indirect interest.

**Project.** A project is a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. *Contiguous* in this definition includes “adjacent to”, as well as touching along a boundary or a point.

**Project-based certificate (PBC) program.** The program in which project-based assistance is attached to units pursuant to an Agreement executed by YHA and owner before January 16, 2001 (see §983.10).

**Proposal selection date.** The date YHA gives written notice of PBV proposal selection to an owner whose proposal is selected in accordance with the criteria established in this chapter of the YHA Administrative Plan.

**Qualifying families** (for purpose of exception to 25 percent per-project cap). See §983.56(b)(2)(ii).

**Rehabilitated housing.** Housing units that exist on the proposal selection date, but do not substantially comply with the HQS on that date, and are developed, pursuant to an Agreement between YHA and owner, for use under the PBV program.

**Release of funds** (for purposes of environmental review). Release of funds in the case of the project-based voucher program, under 24 CFR 58.1(b)(6)(iii) and §983.58, means that HUD approves the local YHA's Request for Release of Funds and Certification by issuing a Letter to Proceed (in lieu of using form HUD-7015.16) that authorizes the YHA to execute an “agreement to enter into housing assistance payment contract” (AHAP) or, for existing housing, to directly enter into a HAP with an owner of units selected under the PBV program.

**Rent to owner.** The total monthly rent payable by the family and the YHA to the owner under the lease for a contract unit. Rent to owner includes payment for any housing services, maintenance, and utilities to be provided by the owner in accordance with the lease. (Rent to owner must not include charges for non-housing services including payment for food, furniture, or supportive services provided in accordance with the lease.)

**Responsible entity (RE)** (for environmental review). The unit of general local government within which the project is located that exercises land use responsibility or, if HUD determines this infeasible, the county or, if HUD determines that infeasible, the state.

**Single-family building.** A building with no more than four dwelling units (assisted or unassisted).

**Site.** The grounds where the contract units are located, or will be located after development pursuant to the Agreement.

**Special housing type.** Subpart M of 24 CFR part 982 states the special regulatory requirements for single-room occupancy (SRO) housing, congregate housing, group homes, and manufactured homes. Subpart M provisions on shared housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

***Tenant-paid utilities.*** Utility service that is not included in the tenant rent (as defined in 24 CFR 982.4), and which is the responsibility of the assisted family.

***Total tenant payment.*** The amount described in 24 CFR 5.628.

***Utility allowance.*** See 24 CFR 5.603.

***Utility reimbursement.*** See 24 CFR 5.603.

***Wrong-size unit.*** A unit occupied by a family that does not conform to the YHA's subsidy guideline for family size, by being either too large or too small compared to the guideline.

#### **17.1.D. OTHER FEDERAL REQUIREMENTS [24 CFR 983.4]**

The following provisions apply to assistance under the PBV program.

***Civil money penalty.*** Penalty for owner breach of HAP contract. See 24 CFR 30.68.

***Debarment.*** Prohibition on use of debarred, suspended, or ineligible contractors. See 24 CFR 5.105(c) and 2 CFR part 2424.

***Definitions.*** See 24 CFR part 5, subpart D.

***Disclosure and verification of income information.*** See 24 CFR part 5, subpart B.

***Environmental review.*** See 24 CFR parts 50 and 58 (see also provisions on PBV environmental review at §983.58).

***Fair housing.*** Nondiscrimination and equal opportunity. See 24 CFR 5.105(a) and section 504 of the Rehabilitation Act.

***Fair market rents.*** See 24 CFR part 888, subpart A.

***Fraud.*** See 24 CFR part 792. YHA retention of recovered funds.

***Funds.*** See 24 CFR part 791. HUD allocation of voucher funds.

***Income and family payment.*** See 24 CFR part 5, subpart F (especially §5.603 (definitions), §5.609 (annual income), §5.611 (adjusted income), §5.628 (total tenant payment), §5.630 (minimum rent), §5.603 (utility allowance), §5.603 (utility reimbursements), and §5.661 (section 8 project-based assistance programs: approval for police or other security personnel to live in project)).

***Labor standards.*** Regulations implementing the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), 29 CFR part 5, and other federal laws and

regulations pertaining to labor standards applicable to development (including rehabilitation) of a project comprising nine or more assisted units.

**Lead-based paint.** Regulations implementing the Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856). See 24 CFR part 35, subparts A, B, H, and R.

**Lobbying restriction.** Restrictions on use of funds for lobbying. See 24 CFR 5.105(b).

**Noncitizens.** Restrictions on assistance. See 24 CFR part 5, subpart E.

**Program accessibility.** Regulations implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 24 CFR parts 8 and 9.

**Protection for victims of domestic violence, dating violence, and stalking.** See 24 CFR part 5, subpart L.

**Relocation assistance.** Regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655). See 49 CFR part 24.

**Section 3—Training, employment, and contracting opportunities in development.** Regulations implementing Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). See 24 CFR part 135.

**Uniform financial reporting standards.** See 24 CFR part 5, subpart H.

**Waiver of HUD rules.** See 24 CFR 5.110.

#### **17.1.E. MAXIMUM AND MINIMUM AMOUNT OF PBV ASSISTANCE [24 CFR 983.6]**

The YHA may select owner proposals to provide project-based assistance for up to 20 percent of the amount of budget authority allocated to the YHA by HUD in the YHA voucher program. YHA is not required to reduce the number of PBV units selected under an Agreement or HAP contract if the amount of budget authority is subsequently reduced. All Project-based Certificate (PBC) and project-based voucher units for which the YHA has issued a notice of proposal selection or which are under an Agreement or HAP contract for PBC or project-based voucher assistance count against the 20 percent maximum.

The YHA is responsible for determining the amount of budget authority that is available for project-based vouchers and for ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC. Before the YHA issues a Request for Proposals in accordance with §983.51(b)(1) or makes a selection in accordance with §983.51(b)(2), the YHA must submit the following information to a HUD field office for review:

- (1) The total amount of annual budget authority;

- (2) The percentage of annual budget authority available to be project-based; and
- (3) The total amount of annual budget authority the YHA is planning to project-base pursuant to the selection and the number of units that such budget authority will support.

#### **17.1.F. UNIFORM RELOCATION ACT [24 CFR 983.7]**

All households displaced as a result of the Agreement or HAP contract must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, or with local public funds, or with funds available from other sources. Relocation costs may not be paid from voucher program funds; however, provided payment of relocation benefits is consistent with state and local law, YHA may use their administrative fee reserve to pay for relocation assistance after all other program administrative expenses are satisfied. Use of the administrative fee reserve in this manner must be consistent with legal and regulatory requirements, including the requirements of 24 CFR 982.155 and other official HUD issuances.

The YHA must require the owner to comply with the URA and 49 CFR part 24. In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the Agreement between the owner and the YHA.

#### **17.1.G. PROPOSAL SELECTION PROCEDURES [24 CFR 983.51]**

The YHA’s Administrative Plan must describe the procedures for owner submission of PBV proposals and for YHA selection of PBV proposals. Before selecting a PBV proposal, the YHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing (§§983.53 and 983.54), complies with the cap on the number of PBV units per project (§983.56), and meets the site selection standards (§983.57).

The YHA must select PBV proposals in accordance with the selection procedures in the YHA Administrative Plan. The YHA must select PBV proposals by either of the following two methods.

- (1) ***YHA request for PBV Proposals.*** The YHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
- (2) ***Selection based on previous competition.*** The YHA may select, without competition, a proposal for housing assisted under a federal, State, or local government housing assistance,

community development, or supportive services program that required competitive selection of proposals (e.g., HOME, and units for which competitively awarded low-income housing tax credits (LIHTCs) have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within 3 years of the PBV proposal selection date, and the earlier competitively selected housing assistance proposal did not involve any consideration that the project would receive PBV assistance.

***Public notice of YHA request for PBV proposals.*** If the YHA will be selecting proposals under the request for PBV proposals, YHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the YHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the YHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

***YHA notice of owner selection.*** The YHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

***YHA-owned units.*** YHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the YHA-owned units were appropriately selected based on the selection procedures specified in the YHA administrative plan. Under no circumstances may PBV assistance be used with a public housing unit. PBV may be used in the conversion of Public Housing to the PBV Program under RAD.

***Public review of YHA selection decision documentation.*** The YHA must make documentation available for public inspection regarding the basis for the YHA selection of a PBV proposal. Owner proposal selection does not require submission of form HUD-2530 or other HUD previous participation clearance.

### **Other Criteria**

The YHA, YHA-affiliates, or developers engaged by the YHA to redevelop YHA property, may submit PBV proposals and be awarded vouchers under any RFP published by the YHA or be awarded vouchers if the proposed project was competitively selected under another federal, state, or local housing assistance program in accordance with 24 CFR 983.51(b)(2). Proposals submitted by the YHA, an YHA-affiliate, or developer engaged by the YHA to redevelop public housing, must conform to the submission guidelines stated in the full RFP document and shall be evaluated under the same selection criteria as all other proposals. No YHA, or YHA-affiliate, employee responsible for preparing the response to the RFP shall be involved in the evaluation or selection of proposals or the award of the vouchers. Provided, however, that any selection process for YHA-owned units shall be approved by HUD in accordance with 24 CFR Part 983.

Proposals for PBV assistance may have been independently selected for housing assistance as described above may be submitted to YHA on a rolling basis. Additionally, the YHA may also directly contact specific owners that have already been selected for federal, state or local housing assistance based on a previously held competition to inform them of available PBV assistance.

YHA's selection of proposals under the alternative competitive processes may be contingent upon the owner providing additional information required according to YHA's selection requirements and HUD and YHA requirements for PBV assistance. YHA will inform owners of any additional requirements at the time their proposals are submitted. Housing owned by YHA, a YHA-affiliate, or a developer engaged by YHA may also be awarded vouchers under this Section. Provided, however, that any selection process for YHA-owned units shall be approved by HUD in accordance with 24 CFR Part 983.

### **Selection Criteria**

Proposals will be selected according to the following selection criteria:

- The housing must promote one of YHA's priorities for its PBV program;
- The proposal must comply with all HUD program regulations and requirements;
- The property must be eligible housing in accordance with 24 CFR 983.53 and 983.54.
- The proposal must comply with the HUD cap on PBV units per project at 24 CFR 983.56;
- The housing site must meet the site selection standards detailed at 24 CFR 983.57;
- Proposals for new construction or rehabilitation projects must demonstrate capacity, experience, and successful outcomes in prior projects that indicate their ability to complete the construction work effectively and within the proposed schedule;
- Proposals for all housing must demonstrate capacity, experience, and successful outcomes in property management, particularly management of housing targeted to low income persons and families;
- Proposals for supportive housing must demonstrate the capacity, experience, and successful outcomes of the supportive services provider that indicate its ability to effectively provide sufficient supportive services. More detailed information about minimum supportive services guidelines is provided later in this addendum.
- Proposals must provide evidence of sufficient financing commitments (for construction, operations, and supportive services if applicable) to demonstrate the project's long-term viability.
- The owner is good standing with HUD and YHA.

YHA reserves the right to reduce the number of project-based units that have been requested.

## Housing Types

The YHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an Agreement.

**Existing housing**—A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of YHA selection the units substantially comply with HQS.

- (1) Units for which rehabilitation or new construction began after owner's proposal submission but prior to execution of the AHAP do not subsequently qualify as existing housing.
- (2) Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

**New Construction or Rehabilitated Housing** as found in 983 Subpart D

### 17.1.H. PROHIBITION OF ASSISTANCE FOR INELIGIBLE UNITS [24 CFR 983.53]

YHA will not attach or pay PBV assistance for units in the following types of housing:

- (1) Shared housing;
- (2) Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;
- (3) Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care. However, YHA may attach PBV assistance for a dwelling unit in an assisted living facility that provides home health care services such as nursing and therapy for residents of the housing;
- (4) Units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;
- (5) Manufactured homes;
- (6) Transitional Housing

**Prohibition against assistance for owner-occupied unit.** The YHA may not attach or pay PBV assistance for a unit occupied by an owner of the housing. A member of a cooperative who owns shares in the project assisted under the PBV program shall not be considered an owner for purposes of participation in the PBV program.

**Prohibition against selecting unit occupied by an ineligible family.** Before the YHA selects a specific unit to which assistance is to be attached, the YHA must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assistance. The YHA must not select or enter into an Agreement or HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

***Prohibition against assistance for units for which commencement of construction or rehabilitation occurred prior to AHAP.*** The YHA may not attach or pay PBV assistance for units for which construction or rehabilitation has commenced as defined in §983.152 after proposal submission and prior to execution of an AHAP

YHA will not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- (a) A public housing dwelling unit;
- (b) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);
- (c) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);
- (d) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- (e) A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z-1). However, YHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
- (g) A Section 202 project for elderly or non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, (12 U.S.C. 1701q);
- (h) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);
- (i) A Section 101 rent supplement project (12 U.S.C. 1701s);
- (j) A unit subsidized with any form of tenant-based rental assistance (as defined at 24 CFR 982.1(b)(2)) (e.g., a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 et seq.);
- (l) A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by YHA in accordance with HUD requirements. For this purpose, “housing subsidy” does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

#### **17.1.I. SUBSIDY LAYERING REVIEW [24 CFR 983.55]**

***Subsidy layering requirements.*** The YHA may provide PBV assistance only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits. The subsidy layering requirements are not applicable to existing housing. A further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which included a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.

***When subsidy layering review is conducted.*** The YHA may not enter into an Agreement or HAP contract until HUD or a housing credit agency approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

***Owner certification.*** The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

#### **17.1.J. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT [24 CFR 983.56]**

***25 percent per project cap.*** Except as provided in the regulations and RAD conditions, YHA will not select a proposal to provide PBV assistance for units in a building or enter into an Agreement or HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP is more than 25 percent of the number of dwelling units (assisted or unassisted) in a project.

***Excepted Units.*** In the following cases, PBV units are not counted against the 25 percent per project cap:

- Units in a single-family building (1-4 units);
- Excepted units in a multifamily project.

“Excepted units” means units in a multifamily building that are specifically made available for qualifying families. “Qualifying families” means:

- Elderly or disabled families; or
- Families receiving supportive services.

YHA must include in the administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. YHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the YHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails without good cause to complete its FSS contract of participation or if the family fails to complete the supportive services requirement as outlined in the YHA administrative plan, the YHA will take the actions provided under §983.262(d), and the owner may terminate the lease in accordance with §983.257(c).

Also, at the time of initial lease execution between the family and the owner, the family and the YHA must sign a statement of family responsibility. The statement of family responsibility must contain all family obligations including the family's participation in a service program under this section. Failure by the family without good cause to fulfill its service obligation will require the YHA to terminate assistance. If the unit at the time of such termination is an excepted unit, the exception continues to apply to the unit as long as the unit is made available to another qualifying family.

*Set-aside for qualifying families.* In leasing units in a multifamily building pursuant to the PBV HAP, the owner must set aside the number of excepted units made available for occupancy by qualifying families. YHA may refer only qualifying families for occupancy of excepted units.

#### **17.1.K. SUPPORTIVE SERVICES FOR FAMILIES IN EXCEPTED UNITS AND GUIDELINES AND REQUIREMENTS [24 CFR 983.56]**

Pursuant to HUD regulations, project-based assistance will ordinarily be limited to 25% of the units contained within the proposed project. However, for projects housing elderly families, disabled families or for projects providing supportive services, each unit that is occupied by elderly, disabled or families receiving qualified supportive services shall be an “excepted unit” and shall not apply towards the 25% cap. Furthermore, buildings with four (4) or fewer units are excluded from the 25% cap.

#### **Qualifying Supportive Services**

Qualifying and Supportive services include an array of activities to transition families to a better quality of life or movement to self-sufficiency including but not limited to:

- Participation in any of the YHA’s Housing Choice Voucher Program FSS programs
- Child care – child care of a type that provides sufficient hours of operation and serves an appropriate range of ages;
- Transportation – transportation necessary to enable a participating family to receive available services, or to commute to their places of employment;
- Education – remedial education; education for completion of secondary or post-secondary schooling, English as Second Language (ESL) classes;
- Employment – job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the contract of participation;
- Personal Welfare – substance/alcohol abuse treatment and counseling;
- General health care and services – mental health services; HIV/AIDS related services; behavior assessments

- Household skills and management – training in homemaking and parenting skills; household management; money management; nutrition; obtaining and retaining government, financial and medical benefits; family counseling;
- Legal Services
- Other services – any other services and resources, including case management, or reasonable accommodations for individuals with disabilities, that the YHA determines to be appropriate in assisting families to achieve economic independence and self-sufficiency.

It is not necessary that the above services be provided by or at the project. However, to qualify for as an “excepted unit” a family must have at least one member receiving at least one qualifying supportive service. Proposals that include supportive services should identify the particular services that will be provided and the service provider(s). YHA will evaluate proposals including supportive housing units on the basis of the specific services provided, the intensity of the services and the target population to be served. YHA will also evaluate supportive housing proposals based on the history and track record of the proposed service providers and the need for the supportive housing at the proposed site.

Supportive services for exempted units must be in addition to those provided by YHA. They may be coordinated by a supportive services coordinator employed by the owner or management-company, or provided by a qualified non-profit service agency as determined by YHA.

Supportive services provided by YHA include the Family Self-Sufficiency Program, the computer literacy classes, job readiness classes, computer-based job training and adult basic education classes offered onsite in YHA’s public housing development. All tenant-based and project-based voucher residents, regardless of disabilities or limitations, are eligible for these services.

Supportive services proposed by the owner, property manager, or a non-profit service agency must be specified in the response to the project-based RFP. If the services are approved and the proposed units are accepted as exempt by YHA, the services are described as a required component in the Agreement and HAP contract. To qualify as an excepted unit, the owner or provider agency must demonstrate a reasonable likelihood of funding for the approved supportive services for families occupying the unit throughout the term of the HAP contract.

To qualify as an YHA approved supportive service in excepted units, services must be directed to helping the family achieve the ability to live independently as possible in consideration of their disability. It must be based on case management which accurately assesses family needs, makes appropriate referrals for serving those needs, encourages family participation, and accurately tracks and records family participation and progress on a monthly basis. It is not necessary that the services be provided at or by the project, if they are approved by YHA.

Participation in the approved supportive service is mandatory for families of excepted units. To qualify for an excepted unit, a family must have at least one adult member receiving at least one

qualifying supportive service. YHA will not require participation in medical or disability-related services as a condition of living in an excepted unit, other than drug and alcohol treatment in the case of current abusers.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received supportive services as defined here, and successfully completes the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails to complete the supportive services requirement as outlined herein, YHA will take the actions provided under Sec. 983.261(d) that includes termination from the program, and the owner may terminate the lease in accordance with Sec. 983.257(c).

At the time of initial lease execution between the family and the owner, the family and YHA will sign a statement of family responsibility. The statement of family responsibility must contain all family obligations including the family's participation in a service program under this section. Failure by the family without good cause to fulfill its service obligation will require YHA to terminate assistance. If the unit at the time of such termination is an excepted unit, the exception continues to apply to the unit as long as the unit is made available to another qualifying family.

YHA will monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. YHA will visit sites with excepted units annually to verify continued operation of the program and compliance with the requirements of the HAP contract. This site visit will include an interview with the program or case manager, and a review of a representative portion of case files and the system for tracking family participation.

### **Family Responsibility**

At the time of the initial lease execution between the family and the owner, the family and YHA must sign a Statement of Family Responsibility. The Statement of Family Responsibility must contain all family obligations including the family's participation in a service program as contemplated within this administrative plan.

At the family's annual income recertification, YHA will require written documentation from the service provider or the owner indicating the family's continued compliance with the terms of the supportive services plans. Project owners will also be expected to provide some level of monitoring of the services provided. This monitoring should be detailed in the proposal, and will be evaluated as part of the selection process. At YHA's discretion, YHA may request additional documentation of compliance with supportive service obligations.

The unit eligible for status as an "excepted unit" so long as at the time of the occupying family's initial tenancy at least one member of the family is receiving a qualifying supportive service. If

the family completes an FSS contract of participation or the supportive services requirement, the unit will continue to count as an “excepted unit” for as long as the family resides in that unit.

### **Family Failure to Comply with Supportive Service Requirements**

Failure without good cause by a family to complete or comply with its supportive service participation requirements will result in termination of the project based assistance for that unit and may result in the termination of the lease by the project owner.

### **17.1.L. HUD AND YHA SITE SELECTION CRITERIA [24 CFR 983.57]**

YHA will only select proposals which demonstrate consideration of and compliance with the site selection standards at 24 CFR 983.57, as such may be amended or revised, which shall ensure that selected proposals will meet the above program goals of deconcentrating poverty, expanding housing and economic opportunities, and otherwise providing needed housing support.

YHA will not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless YHA has determined that:

- (1) Project-based assistance for housing at the selected site is consistent with the goal of de-concentrating poverty and expanding housing and economic opportunities. The standard for de-concentrating poverty and expanding housing and economic opportunities must be consistent with YHA Agency Plan and the YHA Administrative Plan. In developing the standards to apply in determining whether a proposed PBV development will be selected, a YHA will consider the following:
  - (a) Whether the census tract in which the proposed PBV development will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
  - (b) Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;
  - (c) Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization;
  - (d) Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;
  - (e) Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;
  - (f) If the poverty rate in the area where the proposed PBV development will be located is greater than 20 percent, YHA will consider whether in the past five years there has been an overall decline in the poverty rate;

(g) Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located.

(2) The site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d(4)) and HUD's implementing regulations at 24 CFR part 1; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3629); and HUD's implementing regulations at 24 CFR parts 100 through 199; Executive Order 11063 (27 FR 11527; 3 CFR, 1959-1963 Comp., p. 652) and HUD's implementing regulations at 24 CFR part 107. The site must meet the section 504 site selection requirements described in 24 CFR 8.4(b)(5).

(3) The site meets the HQS site standards at 24 CFR 982.401(1).

(4) The site selection will meet AFFH conditions and goals.

***Existing and rehabilitated housing site and neighborhood standards.*** A site for existing or rehabilitated housing must meet the following site and neighborhood standards. The site must:

(1) Be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.)

(2) Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(3) Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(4) Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.

***New construction site and neighborhood standards.*** A site for newly constructed housing must meet the following site and neighborhood standards:

(1) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(2) The site must not be located in an area of minority concentration, except as permitted under paragraph (3) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(3) A project may be located in an area of minority concentration only if:

(a) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration; or

(b) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (e) (3)(vi) of this section for further guidance on this criterion).

(c) As used in paragraph (3)(i) of this section, "sufficient" does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.

(d) Units may be considered "comparable opportunities," as used in paragraph (3)(i) of this section, if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(e) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

- A significant number of assisted housing units are available outside areas of minority concentration.

- There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.
- There are racially integrated neighborhoods in the locality.
- Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.
- Minority families have benefited from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.
- A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.
- Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

Application of the “overriding housing needs” criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a “revitalizing area”). An “overriding housing need,” however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(4) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(5) The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(6) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least

equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(7) Except for housing designed for elderly persons, travel time, and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

#### **17.1.M. ENVIRONMENTAL REVIEW [24 CFR 983.58]**

Activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The City, County or HUD is the “responsible entity” or “RE” responsible for the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and related applicable federal laws and authorities in accordance with 24 CFR 58.5 and 58.6. If YHA objects in writing to having the RE perform the federal environmental review, or if the RE declines to perform it, then HUD may perform the review itself. (24 CFR 58.11).

In the case of existing housing, the RE must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

YHA may not enter into an Agreement or HAP contract with an owner, and the YHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until one of the following occurs:

- (1) The RE has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and request for release of funds;
- (2) The RE has determined that the project to be assisted is exempt under 24 CFR 58.34 or is categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b); or
- (3) HUD has performed an environmental review under 24 CFR part 50 and has notified YHA in writing of environmental approval of the site.

HUD will not approve the release of funds for PBV assistance under this part if YHA, the owner, or any other party commits funds (i.e., enters an Agreement or HAP contract or otherwise incurs any costs or expenditures to be paid or reimbursed with such funds) before YHA submits and HUD approves its request for release of funds (where such submission is required).

YHA will supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform any required environmental review for any site. YHA will require the owner to carry

out mitigating measures required by the RE (or HUD, if applicable) as a result of the environmental review.

#### **17.1.N. YHA-OWNED UNITS [24 CFR 983.59]**

*Selection of YHA-owned units.* The selection of YHA-owned units must be done in accordance with the proposal selection procedures set forth in this chapter of the Administrative Plan (24 CFR 983.51(e)). In the case of YHA-owned units, the following program services may not be performed by the YHA, but must be performed instead by an independent entity approved by HUD.

- (1) *Determination of rent to owner for the YHA-owned units.* Rent to owner for YHA-owned units is determined pursuant to Sec. 983.301 through 983.305 in accordance with the same requirements as for other units, except that the independent entity approved by HUD must establish the initial contract rents based on an appraisal by a licensed, state-certified appraiser;
- (2) *Initial and renewal HAP contract term.* The term of the HAP contract and any HAP contract renewal for YHA-owned units must be agreed upon by the YHA and the independent entity approved by HUD. Any costs associated with implementing this requirement must be paid for by the YHA; and
- (3) *Inspection of YHA-owned units* as required by Sec. 983.103(f).

The independent entity that performs these program services may be the unit of general local government for YHA jurisdiction (unless YHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

YHA may compensate the independent entity and appraiser from YHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). YHA may not use other program receipts to compensate the independent entity and appraiser for their services. The YHA, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.

#### **17.1.O. HOUSING QUALITY STANDARDS [24 CFR 983.101]**

*HQS applicability.* Except as otherwise provided in this section, 24 CFR 982.401 (housing quality standards) applies to the PBV program. The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

*HQS for special housing types.* For special housing types assisted under the PBV program, housing quality standards in 24 CFR part 982 apply to the PBV program.

**Lead-based paint requirements.** The lead-based paint requirements at Sec. 982.401(j) do not apply to the PBV program. The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

**(4) HQS enforcement.** Parts 982 and 983 do not create any right of the family or any party, other than HUD or YHA, to require enforcement of the HQS requirements or to assert any claim against HUD or YHA for damages, injunction, or other relief for alleged failure to enforce the HQS.

**Minimum Standards.** HQS establishes the minimum federal housing quality standards for PBV housing. However, YHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement.

#### **17.1.P. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES [24 CFR 983.102]**

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. YHA shall ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR part 8, subpart C. Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable.

#### **17.1.Q. INSPECTING UNITS [24 CFR 983.103]**

YHA will examine the proposed site before the proposal selection date. If the units to be assisted already exist, YHA will inspect all the units before the proposal selection date, and must determine whether the units substantially comply with the HQS. To qualify as existing housing, units must substantially comply with the HQS on the proposal selection date. However, YHA may not execute the HAP contract until the units fully comply with the HQS.

YHA will inspect each contract unit before execution of the HAP contract. YHA may not enter into a HAP contract until every unit covered by the contract fully complies with the HQS.

**Turnover inspections.** Before providing assistance to a new family in a contract unit, YHA will inspect the unit. YHA may not provide assistance on behalf of the family until the unit fully complies with the HQS.

***Annual/Biennial inspections.*** At least annually/biennially during the term of the HAP contract, YHA will inspect a random sample, consisting of at least 20 percent of the contract units in each **building** to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections are not counted toward meeting this annual inspection requirement. If more than 20 percent of the annual sample of inspected contract units in a **building** fail the initial inspection, YHA will re-inspect 100 percent of the contract units in the building.

***Other inspections.*** YHA may inspect contract units whenever it determines an inspection is needed to comply with the HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. YHA will take into account complaints from residents and any other information coming to its attention in scheduling inspections.

***Follow-up Inspections.*** YHA will conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of the HQS. (Family HQS obligations are specified in 24 CFR 982.404(b)).

***Quality Control Inspections.*** In conducting supervisory quality control HQS inspections, YHA shall include a representative sample of both tenant-based and project-based units.

***Inspecting YHA-owned units.*** In the case of YHA-owned units, the inspections required under this section must be performed by an independent agency designated in accordance the above section on YHA-owned units (24 CFR 983.59). The independent entity must furnish a copy of each inspection report to YHA and to the HUD field office where the project is located. YHA will take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by YHA as owner.

***Mixed-finance properties.*** In the case of a property assisted with project-based vouchers (authorized at 42 U.S.C. 1437f(o)(13)) that is subject to an alternative inspection, the YHA may rely upon inspections conducted at least triennially to demonstrate compliance with the inspection requirement of 24 CFR 982.405(a).

#### **17.1.R. SUBPART D- REQUIREMENTS FOR REHABILITATED AND NEWLY CONSTRUCTED UNITS**

This Subpart D applies to PBV assistance for newly constructed or rehabilitated housing. This Subpart D does not apply to PBV assistance for existing housing. Housing selected under this subpart cannot be selected as existing housing, as defined in §983.52, at a later date.

#### **The Agreement to Enter into a HAP Contract (24 CFR 983.152 - 983.154)**

For units that do not substantially comply with HQS on the proposal selection date, an agreement to enter into a Housing Assistance Payment (HAP) Contract may be made. This includes newly constructed or rehabilitated housing sites which are not completed prior to their selection by YHA. In such cases the development must be completed under an Agreement between the owner and the YHA. The Agreement must be in the form required by HUD headquarters (see 24 CFR 982.162). In the Agreement the owner agrees to develop the contract units to comply with HQS, and YHA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, YHA will enter into a HAP contract with the owner for the contract units.

***Commencement of construction or rehabilitation.*** The YHA may not enter into an agreement if commencement of construction or rehabilitation has commenced after proposal submission. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing or rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

At a minimum, the Agreement must include the following for units to be developed (newly constructed or rehabilitated) and assisted under the PBV program:

1. Site description;
2. Location of contract units on site;
3. Number of contract units by area (square feet) and number of bedrooms and bathrooms;
4. Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;
5. Utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant;
6. Indication of whether or not the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR 8.22 and 8.23 apply to units under the Agreement. If these requirements are applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement,
7. Estimated initial rents to owner for the contract units;
8. Anticipated term of the initial HAP contract
9. Description of the work to be performed under the Agreement. If the Agreement is for rehabilitation of units, the work description must include the site plan and rehabilitation work write up and, where determined necessary by the YHA, specifications, and plans. If the Agreement is for new construction, the work description must include the working drawings and specifications. At a minimum, the housing must comply with the HQS. YHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, over and above the HQS, and any such additional requirement must be specified in the Agreement.

10. Deadlines for completion by the owner, and for the owner to submit the required evidence of completion.

### **When Agreement is Executed**

The agreement must be promptly executed, in accordance with the following conditions:

- (a) ***Prohibition of excess subsidy.*** The YHA may not enter the Agreement with the owner until the subsidy layering review is completed (see §983.55).
- (b) ***Environmental approval.*** The YHA may not enter the Agreement with the owner until the environmental review is completed and the YHA has received the environmental approval (see §983.58).
- (c) ***Prohibition on construction or rehabilitation.*** The YHA shall not enter into the Agreement with the owner if construction or rehabilitation has commenced after proposal submission.

### **Conduct of Development Work (24 CFR 983.154)**

The development will comply with conditions under the conduct of development work in the regulations.

In the case of an Agreement for nine or more contract units to be newly constructed or substantially rehabbed, the owner must certify that it's contractors and subcontractors will pay Davis-Bacon wages to laborers and mechanics employed in the construction of the contract units. They must also certify they will comply with Section 3 of the Housing and Urban Development Act of 1968. The owner and the owner's contractors and subcontractors must comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The YHA must monitor compliance with labor standards

The Agreement will include the requirements in 24 CFR 983.154 including certification by the Owner that they and other project principles are not on the US General Services Administration list of parties excluded from federal procurement and non-procurement programs. In addition, the owner must disclose any possible conflict of interest that would be a violation of the Agreement, the HAP Contract, or HUD regulations.

The Agreement will specify that, at a minimum, the housing must comply with the HQS and obtain a final certificate of occupancy from the City/County after passing City/County inspections for compliance with the City's/County's adopted building and property maintenance codes.

YHA may not enter the Agreement with the owner until the subsidy layering review is completed by HUD and the environmental review is completed and the YHA has received the environmental approval from the RE. The Agreement will be executed promptly by YHA after it gives notice of proposal selection to the owner, and receives the subsidy layering review approval from HUD and the environmental review approval from RE.

#### **17.1.S. COMPLETION AND ACCEPTANCE OF UNITS [24 CFR 983.155 - 983.156]**

The owner must complete the housing in accordance with the terms of the Agreement. Evidence of completion will include the following in the form and manner required by YHA:

- (1) Owner certification that the work has been completed in accordance with the HQS and all requirements of the Agreement;
- (2) Owner certification that the owner has complied with the labor standards and equal opportunity requirements set forth in the Agreement;
- (3) A permanent certificate of occupancy from the City/County
- (4) An architect's certification that the housing complies with:
  - a) HUD Housing Quality Standards;
  - b) All applicable building codes;
  - c) Zoning;
  - d) The rehabilitation work write-up (for rehabilitated housing) or the plans and specifications (for newly constructed housing); or any additional design or quality requirements required by YHA pursuant to the Agreement.
  - e) Any additional design or quality requirements pursuant to the Agreement

When YHA has received owner notice that the housing is completed:

- 1) YHA will inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with the HQS and any additional requirement imposed by YHA under the Agreement.
- 2) YHA will determine if the owner has submitted all required evidence of completion.
- 3) If the work has not been completed in accordance with the Agreement, YHA will not enter into the HAP contract.

A request for YHA approval of any change in the project design or configuration which alters the terms of the Agreement (e.g. a reduction in the size or number of units) must be received by YHA 30 days in advance of the planned implementation of the change during construction. YHA shall have 10 business days to review such request. YHA may terminate the Agreement if such change, in the sole opinion of YHA, substantially alters the scope of the project, reduces the quality of the housing to be provided, or increases YHA's administrative requirements.

The owner must inform YHA 30 days in advance of any projected delay in the completion of the site, and request an extension of the Agreement. At YHA's discretion, the Agreement may be extended for a 30 day period. YHA may extend the Agreement for a total of three 30 day periods if it determines at the end of each period that there is reasonable cause for the delays. Extensions beyond 90 days are not permitted and YHA will advise the owner to re-submit the site in a future YHA PBV proposal round when it is completed.

If YHA determines that the housing has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the YHA will submit the HAP contract for execution by the owner and then execute the HAP contract.

#### **17.1.T. THE HAP CONTRACT [24 CFR 983.201 – 983.208]**

After YHA approves and accepts the units, it will enter into a HAP contract with the owner. The HAP contract must be in the form required by HUD headquarters (see 24 CFR 982.162). YHA will make housing assistance payments to the owner in accordance with the HAP contract. Housing assistance is paid for contract units leased and occupied by eligible families during the contract term.

The HAP contract must specify:

- 1) The total number of contract units by number of bedrooms;
- 2) Information needed to identify the site and the building or buildings where the contract units are located. The information must include the project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- 3) Information needed to identify the specific contract units in each building. The information must include the number of contract units in the building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit.
- 4) Services, maintenance, and equipment to be supplied by the owner without charges in addition to the rent to owner;
- 5) Utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;
- 6) Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

- 7) The HAP contract term;
- 8) The number of units in any building that will exceed the 25 percent per building cap (as described in Sec. 983.56), which will be set-aside for occupancy by qualifying families (elderly or disabled families and families receiving supportive services); and
- 9) The initial rent to owner (for the first 12 months of the HAP contract term).

Before execution of the HAP contract, YHA will inspect each contract unit in accordance with the above section in this Chapter regarding inspecting units (24 CFR 983.103(b)). YHA may not enter into the HAP contract until YHA has determined that the unit complies with the HQS.

In the case of existing housing, the HAP contract must be executed promptly after YHA selection of the owner proposal and YHA inspection and acceptance of the housing.

In the case of newly constructed or rehabilitated housing the HAP contract must be executed after YHA has inspected the completed units and has determined that the units have been completed in accordance with the Agreement and the owner has furnished all required evidence of completion. In the HAP contract, the owner certifies that the units have been completed in accordance with the Agreement.

***Term of HAP contract. (24 CFR 983.206)***

***15-year initial term.*** The YHA may enter into a HAP contract with an owner for an initial term of up to 15 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 15 years. In the case of YHA-owned units, the term of the initial HAP contract shall be determined in accordance with §983.59.

**YHA Policy**

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

***Extension of term.*** YHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to 15 years if the YHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 15 years. YHA may provide for multiple extensions; however, in no circumstance may such extensions exceed 15 years, cumulatively.

Extensions after the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the YHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial

extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations described in this paragraph. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of YHA-owned units, any extension of the initial term of the HAP contract shall be determined in accordance with §983.59.

YHA Policy

When determining whether or not to extend an expiring PBV contract, the YHA will consider several factors including, but not limited to:

- The cost of extending the contract and the amount of available budget authority;
- The condition of the contract units;
- The owner's record of compliance with obligations under the HAP contract and lease(s);
- Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and
- Whether the funding could be used more appropriately for tenant-based assistance.

***Termination by YHA--Insufficient Funding.*** The HAP contract must provide that the term of the YHA's contractual commitment is subject to the availability of sufficient appropriated funding (budget authority) as determined by HUD or by YHA in accordance with HUD instructions. For purposes of this section, "sufficient funding" means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, YHA has the right to terminate the HAP contract by notice to the owner for all or any of the contract units. Such notice shall be delivered promptly after making such a determination. Such action by YHA shall be implemented in accordance with HUD instructions.

***Termination by Owner--Reduction Below Initial Rent.*** The owner may terminate the HAP contract, upon notice to the YHA, if the amount of the rent to owner for any contract unit, as adjusted in accordance with 24 CFR 983.302, is reduced below the amount of the initial rent to owner (rent to owner at the beginning of the HAP contract term). In this case, the assisted families residing in the contract units will be offered tenant-based voucher assistance.

**Statutory Notice Requirements: Contract Termination or Expiration (24 CFR §983.206)**

Notices required in accordance under termination or expiration must be provided in the form prescribed by HUD. Not less than one year before termination of a PBV or PBC HAP contract, the owner must notify the YHA and assisted tenants of the termination. For purposes of this section, the term “termination” means the expiration of the HAP contract or an owner's refusal to renew the HAP contract. If an owner does not give timely notice of termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of an owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

***Amendment to Substitute Contract Units.*** At the discretion of YHA and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Prior to such substitution, YHA will inspect the proposed substitute unit and must determine the reasonable rent for such unit.

***Amendment to Add Contract Units.*** At the discretion of the YHA, and provided that the total number of units in a project that will receive PBV assistance will not exceed 25 percent of the total number of dwelling units in the project (assisted and unassisted), (unless units were initially identified in the HAP contract as excepted from the 25 percent limitation in accordance with §983.56(b)), or the 20 percent of authorized budget authority as provided in §983.6, a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project. An amendment to the HAP contract is subject to all PBV requirements (e.g., rents are reasonable), except that a new PBV request for proposals is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

***Staged Completion of Contract Units.*** Even if contract units are placed under the HAP contract in stages commencing on different dates, there is a single annual anniversary for all contract units under the HAP contract. The annual anniversary for all contract units is the annual anniversary date for the first contract units placed under the HAP contract. The expiration of the HAP contract for all the contract units completed in stages must be concurrent with the end of the HAP contract term for the units originally placed under HAP contract.

#### **Condition of Contract Units (24 CFR §983.208)**

***Owner maintenance and operation.*** The owner must maintain and operate the contract units and premises in accordance with the HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the YHA and in the lease with each assisted family.

At the discretion of the YHA, the HAP contract may also require continuing owner compliance during the HAP term with additional housing quality requirements specified by the YHA (in addition to, but not in place of, compliance with the HUD-prescribed HQS). Such additional requirements may be designed to assure continued compliance with any design, architecture, or quality requirement specified in the Agreement.

***Remedies for HQS violation.*** The YHA must vigorously enforce the owner's obligation to maintain contract units in accordance with the HQS. The YHA may not make any HAP payment to the owner for a contract unit covering any period during which the contract unit does not comply with the HQS. If the YHA determines that a contract unit is not in accordance with the housing quality standards (or other HAP contract requirement), the YHA may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

***Maintenance and replacement—Owner's standard practice.*** Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

#### **17.1.U. OWNER RESPONSIBILITIES AND CERTIFICATIONS [24 CFR 983.209-983.210]**

The owner is responsible for performing all of the owner responsibilities under the Agreement and the HAP contract. 24 CFR 982.452 (Owner responsibilities) applies.

By execution of the HAP contract, the owner certifies that at such execution and at all times during the term of the HAP contract:

- a) All contract units are in good and tenantable condition. The owner is maintaining the premises and all contract units in accordance with the HQS.
- b) The owner is providing all the services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases with assisted families.
- c) Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by the YHA, and the lease is in accordance with the HAP contract and HUD requirements.
- d) To the best of the owner's knowledge, the members of the family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.

- e) The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.
- f) The amount of the housing assistance payment is the correct amount due under the HAP contract.
- g) The rent to owner for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.
- h) Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payment or other consideration (from the family, the YHA, HUD, or any other public or private source) for rental of the contract unit.
- i) The family does not own or have any interest in the contract unit. The certification required by this section does not apply in the case of an assisted family's membership in a cooperative.
- j) Repair work on a project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

**Removal of the Unit From HAP Contract (24 CFR §983.211)**

Units occupied by families whose income has increased during their tenancy resulting in the tenant rent equaling the rent to the owner, shall be removed from the HAP Contract 180 days following the last housing assistance payment on behalf of the family.

If the project is fully assisted, the YHA may reinstate the unit removed to the HAP contract after the ineligible family vacates the property. If the project is partially assisted, the YHA may substitute a different unit for the unit removed to the HAP contract when the first eligible substitute becomes available.

A reinstatement or substitution of units under the HAP contract, must be permissible under §983.207. The anniversary and expirations dates of the HAP contract for the unit must be the same as it was when it was originally placed under the HAP contract. The YHA must refer eligible families to the owner in accordance with the YHA's selection policies.

**17.1.V. TENANT SELECTION [24 CRF 983.251]**

YHA may select families who are participants in the YHA's tenant-based voucher program and families who have applied for admission to the voucher program- including the PBV Program. Except for voucher participants (determined eligible at original admission to the voucher

program), the YHA may only select families determined eligible for admission at commencement of PBV assistance. The protections for victims of domestic violence, dating violence, or stalking in 24 CFR part 5, subpart L, apply to admission to the project-based program. YHA may not approve a tenancy if the owner (including a principal or other interested party) of a unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the YHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

As with the tenant based program, not less than 75 percent of the families admitted to YHA's tenant based and project-based voucher programs during the fiscal year from the YHA waiting list shall be extremely low-income families. The income-targeting requirements at 24 CFR 982.201(b)(2) also apply to the total of admissions to the YHA's tenant based and project-based voucher programs.

***Protection of In-Place Families.*** The term "in-place family" means an eligible family residing in a proposed contract unit on the proposal selection date. In order to minimize displacement of in-place families, if a unit to be placed under contract that is either an existing unit or one requiring rehabilitation is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the YHA's waiting list (if the family is not already on the list) and, once its continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized PBV unit in the project. (YHA may deny assistance for the grounds specified in 24 CFR 982.552 and 982.553.) Admission of such families is not subject to income-targeting under 24 CFR 982.201(b)(2)(i), and such families must be referred to the owner from the YHA's waiting list. YHA shall give such families first priority for admission to the PBV program. This protection does not apply to families occupying the site that are not eligible to participate in the program on the proposal selection date.

***Selection from the YHA Waiting List.*** Applicants who will occupy PBV units must be selected by YHA from the YHA waiting list. The YHA must select applicants from the waiting list in accordance with the policies in the YHA Administrative Plan.

#### **Waiting List Management**

The YHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units) or may use a single waiting list for the YHA's whole PBV program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.

YHA will establish individual site-based waiting lists for each PBV project selected.

YHA may place families referred by the PBV owner/management entity on its PBV waiting list.

YHA will offer to place applicants who are listed on the waiting list for tenant-based assistance on the site based waiting list(s) for PBV assistance upon the opening of such site based waiting list.

YHA will open and close the site-based waiting lists pursuant to the procedures outlined in Administrative Plan.

An applicant may be placed on both the tenant-based and project-based waiting list. At the time of application, should the waiting list be open, YHA will offer to place applicants who are listed on the tenant-based waiting list on the PBV waiting list, and vice versa.

YHA will establish criteria or preferences for occupancy of particular sites on the PBV waiting list. YHA may place families referred by the PBV owner on its PBV waiting list. In selecting families to occupy PBV units with special accessibility features for persons with disabilities, YHA will first refer families who require such features to the owner (see 24 CFR 8.26 and 100.202).

***Offer of PBV assistance.*** If a family refuses the YHA's offer of PBV assistance, such refusal does not affect the family's position on the YHA waiting list for tenant-based assistance.

If a PBV owner rejects a family for admission to the owner's PBV units, such rejection by the owner does not affect the family's position on the YHA waiting list for tenant-based assistance.

YHA may not take any of the following actions against an applicant who has applied for, received, or refused an offer of PBV assistance:

- Refuse to list the applicant on the YHA waiting list for tenant-based assistance;
- Deny any admission preference for which the applicant is currently qualified;
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the YHA selection policy;
- Remove the applicant from the waiting list for tenant-based voucher assistance.

***Preference for services offered.*** In selecting families, YHA will give preference to disabled families who need services offered at a particular project. The prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply. The preference shall be limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing; who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and for whom such services cannot be provided in a non-segregated setting. Disabled residents shall not be required to accept the particular services offered at the site.

In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from services provided in the project

### **Preferences/Site Specific Requirements**

YHA may establish separate site-based preferences or specific requirements for each PBV project. These preferences may include those for elderly or disabled families, or preferences related to supportive housing programs. Preferences may include those outlined in the Administrative Plan. Residents on the tenant based waiting list will be informed of any applicable preferences for each PBV project at the time of the initial opening of the site-based waiting lists. Applicants for assistance shall also be informed of all applicable preferences for each list at the time of application.

For existing housing, any in-place tenant that qualifies will receive the preference for in-place residents at 24 CFR 983.251(b).

Any preferences that would be necessary to the operation of the project, or required by a funding source must be disclosed in the proposal.

YHA will have site specific requirements for each site and will be posted at the admission office and at the site. It will include additional supportive services requirements.

### **Supportive Housing Related Preferences and Disability**

If PBV units include special accessibility features for persons with disabilities, YHA will first refer families who require such accessibility features to the owner. For other units that are designated to receive supportive services, YHA may give preference to disabled families who need services offered at a particular project. Project owners may advertise the project as offering services for a particular type of disability, however, the project must be open to all otherwise eligible persons with disabilities who may benefit from services provided in the project.

Only families that meet the following limits will be eligible for any supportive housing preference:

- Families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing
- Families that without appropriate supportive services will not be able to obtain or maintain themselves in housing
- Families for whom such services cannot be provided in a non-segregated setting.

Disabled residents shall not be required to accept the particular services offered at the project.

YHA is prohibited from granting preferences to persons with specific disabilities (see 24 CFR 982.207(b)(3)),

### **Tenant Selection**

In referring families to the owner for admission to excepted units, the YHA must give preference to elderly and/or disabled families, or to families receiving supportive services.

When notified of a vacancy in a PBV unit, YHA will refer tenants from the site specific waiting list based on bedroom size in the following order:

First, applicants that meet the site-based preferences based on time and date of application and any priority.

Second, applicants that meet the tenant-based assistance preferences as set forth in this Administrative Plan based on time and date of application and any priority.

Third, all other applicants based on the time and date of the application

### **YHA Information for Accepted Family.**

**Oral briefing.** When a family accepts an offer of PBV assistance, the YHA must give the family an oral briefing. The briefing must include information on the following subjects:

- (1) A description of how the program works; and
- (2) Family and owner responsibilities.

**Information packet.** The YHA must give the family a packet that includes information on the following subjects:

- (1) How the YHA determines the total tenant payment for a family;
- (2) Family obligations under the program; and
- (3) Applicable fair housing information.

**Providing information for persons with disabilities.** If the family head or spouse is a disabled person, the YHA must take appropriate steps to assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet, including in alternative formats. The YHA shall have some mechanism for referring to accessible PBV units a family that includes a person with mobility impairment.

**Providing information for persons with limited English proficiency.** The YHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in

accordance with obligations contained in Title VI of the Civil Rights Act of 1964 and Executive Order 13166.

### **Tenant Screening**

**YHA option.** The YHA has no responsibility or liability to the owner or any other person for the family's behavior or suitability for tenancy. However, the YHA may opt to screen applicants for family behavior or suitability for tenancy and may deny admission to an applicant based on such screening. The YHA will provide additional information to Managers of YHA owned or substantial controlled units in accordance with the Administrative Plan.

The YHA must conduct any such screening of applicants in accordance with policies stated in the YHA administrative plan.

**Owner responsibility.** The owner is responsible for screening and selection of the family to occupy the owner's unit. The owner is responsible for screening of families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy;

**Providing tenant information to owner.** The YHA must give the owner:

- The family's current and prior address (as shown in the YHA records); and
- The name and address (if known to the YHA) of the landlord at the family's current and any prior address.

When a family wants to lease a dwelling unit, the YHA may offer the owner other information in the YHA possession about the family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The YHA will provide additional information upon written request by the owner.

YHA must give the family a description of the YHA policy on providing information to owners. The YHA policy must provide that the YHA will give the same types of information to all owners.

The protections for victims of domestic violence, dating violence, or stalking in 24 CFR part 5, subpart L, apply to tenant screening.

YHA's policy for providing information to owners about families referred to PBV units is not different than YHA's policies for tenant-based applicants, which are provided in YHA's Administrative Plan.

**Leasing of contract units. (24CFR §983.253)**

***Owner selection of tenants.*** During the term of the HAP contract, the owner must lease contract units only to eligible families selected and referred by the YHA from the YHA waiting list. The owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to perform the lease obligations. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection.

***Size of unit.*** The contract unit leased to each family must be appropriate for the size of the family under the YHA's subsidy standards.

**Vacancies. 24 CFR §983.254**

***Filling vacant units.*** The owner must promptly notify the YHA of any vacancy or expected vacancy in a contract unit. After receiving the owner notice, the YHA must make every reasonable effort to refer promptly a sufficient number of families for the owner to fill such vacancies. The owner must lease vacant contract units only to eligible families on the YHA waiting list referred by the YHA. The YHA and the owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy.

***Reducing number of contract units.*** If any contract units have been vacant for a period of 120 or more days since owner notice of vacancy (and notwithstanding the reasonable good faith efforts of the YHA to fill such vacancies), the YHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (by number of bedrooms) that have been vacant for such period.

**Lease. (24CFR §983.256)**

***Tenant's legal capacity.*** The tenant must have legal capacity to enter a lease under state and local law. "Legal capacity" means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

***Form of lease.*** The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant. If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form, except as provided in the lease addendum and regulations. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a YHA

model lease. In all cases, the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

YHA may review the owner's lease form to determine if the lease complies with state and local law. YHA may decline to approve the tenancy if the YHA determines that the lease does not comply with state or local law.

***Required information.*** The lease must specify all of the following:

- (1) The names of the owner and the tenant;
- (2) The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- (3) The term of the lease (initial term and any provision for renewal);
- (4) The amount of the tenant rent to owner. The tenant rent to owner is subject to change during the term of the lease in accordance with HUD requirements;
- (5) A specification of what services, maintenance, equipment, and utilities are to be provided by the owner; and
- (6) The amount of any charges for food, furniture, or supportive services.

***Tenancy addendum.*** (1) The tenancy addendum in the lease shall state:

- The program tenancy requirements (as specified in this part);
- The composition of the household as approved by the YHA (names of family members and any YHA-approved live-in aide).

All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum shall prevail over other provisions of the lease.

***Changes in lease.*** If the tenant and the owner agree to any change in the lease, such change must be in writing, and the owner must immediately give the YHA a copy of all such changes.

The owner must notify the YHA in advance of any proposed change in lease requirements governing the allocation of tenant and owner responsibilities for utilities. Such changes may be made only if approved by the YHA and in accordance with the terms of the lease relating to its amendment. The YHA must redetermine reasonable rent, in accordance with §983.303(c), based on any change in the allocation of responsibility for utilities between the owner and the tenant, and the redetermined reasonable rent shall be used in calculation of rent to owner from the effective date of the change.

***Term of lease.*** (1) The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease. The lease may provide either:

- For automatic renewal for successive definite terms (e.g., month-to-month or year-to-year); or
- For automatic indefinite extension of the lease term.

The term of the lease terminates if any of the following occurs:

- The owner terminates the lease for good cause;
- The tenant terminates the lease;
- The owner and the tenant agree to terminate the lease;
- The YHA terminates the HAP contract; or
- The YHA terminates assistance for the family.

***Lease provisions governing absence from the unit.*** The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by YHA policy. (YHA termination-of-assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.)

**Owner termination of tenancy and eviction. 24 CFR §983.257**

In general, 24 CFR 982.310 applies with the exception that §982.310(d)(1)(iii) and (iv) do not apply to the PBV program. (In the PBV program, “good cause” does not include a business or economic reason or desire to use the unit for an individual, family, or non-residential rental purpose.) 24 CFR 5.858 through 5.861 on eviction for drug and alcohol abuse apply to this part. Part 5, subpart L of 24 CFR, on protection for victims of domestic violence, dating violence, or stalking applies to the PBV Program.

If a family resides in a project-based unit excepted from the 25 percent per-project cap on project-basing because of participation in an FSS or other supportive services program, and the family fails without good cause to complete its FSS contract of participation or supportive services requirement, such failure is grounds for lease termination by the owner.

**Continuation of housing assistance payments. 24 CFR§983.258**

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the YHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to §983.211

**Security deposit: amounts owed by tenant. 24 CFR§983.259**

The owner may collect a security deposit from the tenant. The YHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. When the tenant moves out of the contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts which the tenant owes under the lease. The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant. However, the YHA has no liability or responsibility for payment of any amount owed by the family to the owner.

**Procedures for Families Occupying a Unit of the Wrong Size or an Accessible Unit Whose Accessibility Features Are Not Quite Required by the Family**

***Family occupancy of wrong-size or accessible unit.*** The YHA subsidy standards determine the appropriate unit size for the family size and composition. If the YHA determines that a family is occupying a:

- (1) Wrong-size unit, or
- (2) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the YHA must promptly notify the family and the owner of this determination, and of the YHA's offer of continued assistance in another unit pursuant to the regulations.

***YHA offer of continued assistance.*** If a family is occupying a:

- Wrong-size unit, or
- Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the YHA must offer the family the opportunity to receive continued housing assistance in another unit.

The YHA policy on such continued housing assistance is stated in the administrative plan and may be in the form of:

- Project-based voucher assistance in an appropriate-size unit (in the same project or in another project);
- Other project-based housing assistance (*e.g.*, by occupancy of a public housing unit);
- Tenant-based rental assistance under the voucher program; or

- Other comparable public or private tenant-based assistance (*e.g.*, under the HOME program).

***YHA termination of housing assistance payments.*** If the YHA offers the family the opportunity to receive tenant-based rental assistance under the voucher program, the YHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the YHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration date of the term of the family's voucher, the YHA must remove the unit from the HAP contract.

If the YHA offers the family the opportunity for another form of continued housing assistance in accordance with the regulations (not in the tenant-based voucher program), and the family does not accept the offer, does not move out of the PBV unit within 30 days as determined by the YHA, or both, the YHA must terminate the housing assistance payments for the wrong-sized or accessible unit, at the expiration of a reasonable period as determined by the YHA, and remove the unit from the HAP contract.

#### **Family Right to Move (24CFR§983.261)**

The family may terminate the assisted lease at any time after the first year of occupancy. The family must give the owner advance written notice of intent to vacate (with a copy to the YHA) in accordance with the lease. If the family has elected to terminate the lease in this manner, the YHA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance. Before providing notice to terminate the lease, a family must contact the YHA to request comparable tenant-based rental assistance if the family wishes to move with continued assistance. If voucher or other comparable tenant-based rental assistance is not immediately available upon termination of the family's lease of a PBV unit, the YHA must give the family priority to receive the next available opportunity for continued tenant-based rental assistance. If the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance.

#### **When occupancy may exceed 25 percent cap on the number of PBV units in each project. (24 CFR§983.262)**

Except as provided in §983.56(b) and RAD, the YHA may not pay housing assistance under the HAP contract for contract units in excess of the 25 percent cap pursuant to §983.56(a).

In referring families to the owner for admission to excepted units, the YHA must give preference to elderly and/or disabled families, or to families receiving supportive services.

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received FSS supportive services or any other service as defined in the YHA administrative

plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

A family (or the remaining members of the family) residing in an excepted unit that no longer meets the criteria for a “qualifying family” in connection with the 25 percent per project cap exception (i.e., a family that does not successfully complete its FSS contract of participation or the supportive services requirement as defined in the YHA administrative plan or the remaining members of a family that no longer qualifies for elderly or disabled family status where the YHA does not exercise its discretion must vacate the unit within a reasonable period of time established by the YHA, and the YHA shall cease paying housing assistance payments on behalf of the non-qualifying family. If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the project in accordance with §983.207(a); or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations (e.g., a family fails, without good cause, to successfully complete its FSS contract of participation or supportive services requirement) shall be terminated by the YHA.

The YHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly or disabled family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly or disabled family member or long term or permanent hospitalization or nursing care), the elderly or disabled family member no longer resides in the unit. In this case, the unit may continue to count as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualifying family.

### **Inspections**

The YHA will inspect PBV units in accordance with the regulations at 24 CFR 983.103 and Housing Quality Standards (HQS) at 24 CFR 983.101 and 982.401 and this Administrative Plan:

- **Pre-Selection.** For new construction or rehabilitated units, the YHA will inspect the site prior to making the proposal selection. For existing housing, all units must substantially comply with HQS prior to proposal selection.
- **Prior to entering the HAP Contract.** All units must fully comply with HQS standards prior to executing the HAP Contract.
- **Turnover.** Each time a family moves out of a PBV unit, the YHA will inspect the unit before providing assistance to a new family.
- **Biennial/Annual Inspections.** The YHA will inspect at least 20% of the contract units in each building, turnover inspections are not counted towards meeting the 20%. If more

than 20% of the inspected units fail inspection, the YHA must re-inspect all units in the building.

- As needed. The YHA will inspect units as needed to ensure that the units comply with HQS. The YHA will take into account complaints and other information when scheduling inspections.

YHA-owned units shall be inspected by an independent third party approved by HUD.

## **Rent**

Rent to the owner shall be set in accordance with 24 CFR 983.301, such that the initial rent shall not exceed:

- 1) 110% of the applicable fair market rent for the unit minus the utility allowance;
- 2) the reasonable rent; or
- 3) the rent requested by the owner.

The tenant portion of the rent shall be determined in accordance with 24 CFR 983.353 and the policies in this Administrative Plan.

The YHA shall not make vacancy payments for units that are unoccupied beyond the month of move-out. Owners may request vacancy payments for the month of move out provided that the owner properly notifies the YHA of the vacancy and provided that the vacancy was not caused by any action of the owner.

Rent shall be re-determined in accordance with 24 CFR 983.302:

- Upon the owner's request upon the annual anniversary of the HAP Contract.
- When there is a 5% or greater decrease in the published fair market rents

## **17.1.W. RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM (PIH 2012-32 REV)**

YHA has converted previous public housing to RAD PBV.

**PBV Conversions.** Where the YHA converts assistance of a public housing project to Section 8 PBVs, the project will be administered by the agency on whose Annual Contributions Contract (ACC) the vouchers are assigned (which in many cases will be the same agency that is converting assistance). Contract rents will be established according to the terms described in PIH 2012-32 rev 1 and will be adjusted annually by an operating cost factor at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term. The initial contract will be for a period of at least 15 years (up to 20 years upon approval of the administering voucher agency) and will be subject to annual appropriations. At expiration of the initial contract, the agency administering the vouchers shall offer, and the YHA shall

accept, a renewal contract. Each project with a PBV contract will also carry a concurrent renewable RAD Use Agreement. Further, YHA will provide a ChoiceMobility option to residents of covered projects in accordance with PBV program rules. With the exception of provisions identified in PIH 2012-32 rev 1, regulatory and statutory requirements of the PBV program in 24 CFR Part 983 shall apply.

Under the Demonstration, HUD has the authority to waive or specify alternative public housing requirements, or to establish requirements for converted assistance under the demonstration. Additionally, the RAD statute imposes certain unique requirements. To facilitate the conversion of assistance, HUD is waiving or imposing the following alternative and other public housing program requirements for public housing projects converting assistance.

**Use of Public Housing Program Funds to Support Conversion.** YHA is permitted under the Demonstration to use available public housing funding, including Operating Reserves, Capital Funds, and Replacement Housing Factor (RHF) funds, as an additional source of capital in the development budget to support conversion, whether for rehabilitation or new construction. Eligible conversion-related uses for these funds include pre-development, development, or rehabilitation costs and establishment of a capital replacement reserve or operating reserve. These funds must be identified in the Financing Plan submitted to HUD for review. (YHA may not use public housing program funds on a project following conversion.) If the YHA requests, in accordance with section 9(j)(2)(A)(ii) of the United States Housing Act of 1937 and the relevant HUD Appropriation Acts, HUD will extend the obligation end date for Capital Funds used in the conversion for up to five years from the point when Capital Funds became available to the YHA for obligation. By extending the obligation end dates, the expenditure end dates will correspondingly be also extended. Such extensions will prevent PHAs from otherwise losing its unobligated Capital Funds prior to conversion.

Prior to the approval of a project's Financing Plan, YHA may expend up to \$100,000 in public housing program funds in related pre-development conversion costs per project without HUD approval. Predevelopment assistance may be used to pay for materials and services related to proposed development and may also be used for preliminary development work. Public housing program funds spent prior to the effective date of the HAP are subject to public housing procurement rules. Approval of the Financing Plan constitutes approval of the expenditure of necessary additional predevelopment costs supported by public housing funds.

In the case YHA is converting all units under ACC, there is no restriction on the amount of public housing funds that may be contributed to the converting project(s) at the point of conversion, i.e., the YHA may convey all program funds to the project undergoing conversion. In the case where the YHA will continue to maintain other units in its inventory under public housing ACC, a contribution to the converting project of Operating Funds that exceeds the average amount the project has held in Operating Reserves over the past three years will trigger a subsidy layering review under 24 CFR § 4.13. Similarly, any contribution of Capital Funds, including RHF funds, will trigger a subsidy layering review.

In addition, following execution of the HAP, YHA is authorized to use Operating and Capital Funds to make HAP payments for the remainder of the calendar year of conversion. Otherwise, YHA may not contribute public housing program funds to the covered project unless such funding has been identified in the approved Financing Plan.

**Inapplicability of Section 18 of the Act for Properties Converting All or Substantially All Units.** Conversion of assistance does not require approval through Section 18, unless the proposal would reduce the number of assisted units by more than a de minimis amount. Section 18 will similarly not apply for any units that will be replaced off-site. A de minimis reduction is defined as the greater of five percent of the number of project units under ACC immediately prior to conversion or five units. A unit is excluded from this de minimis threshold if any of the following apply:

1. The unit has already received approval from HUD under Section 18 for Demolition or Disposition;

**Ineligibility for Asset Repositioning Fee (ARF) or Replacement Housing Factor (RHF) Fee.** YHA may not apply for ARF and will be ineligible to receive Capital Fund RHF grants for converted units/projects as is otherwise described in 24 CFR § 990.190(h) and 24 CFR § 905.10(i), respectively. RAD does not affect ARF or RHF fees for projects and PHAs previously receiving those fees.

**Effect of Conversion on YHA's Faircloth Limit.** Section 9(g)(3) of the Act limits the construction of new public housing units, referred to as the "Faircloth Limit." Under the Faircloth Limit, the YHA may not use funds allocated under the Capital or Operating Funds for the purpose of constructing any new public housing units if the construction of those units would result in a net increase in the number of units the YHA owned, assisted, or operated as of October 1, 1999.

Conversions under the Demonstration will reduce YHA's Faircloth Limit. For example, YHA with a pre-RAD Faircloth Limit of 1,000 public housing units would have its Faircloth Limit reduced to 900 units if it converted a 100-unit project. (Units not converted under the de minimis provision would continue to count under the PHA's Faircloth cap.)

**Conversion is a Significant Amendment to Annual/Five Year Plan.** Conversion of assistance under the Demonstration will be considered a significant amendment to the YHA's Five-Year Plan for qualified and non-qualified PHAs, the Annual Plan for non-qualified PHAs, and the Moving to Work (MTW) Plan for MTW PHAs. As such, qualified and nonqualified PHAs, as

well as MTW PHAs, are subject to the Consolidated Plan requirements and the public notice and Resident Advisory Board consultation requirements outlined in 24 CFR Part 903. If the conversion will require changes to the YHA's Admissions and Continued Occupancy Policy (ACOP) and/or Section 8 Administrative Plan, these changes must also be submitted with the significant amendment. YHA must submit this amendment to HUD within 60 days following the delivery of the CHAP. In addition to the information already required by 24 CFR Part 903 for YHA Plan amendments, all PHAs shall be required to provide the information listed in their Significant Amendment.

HUD will review all significant amendments for compliance with civil rights laws, Executive Orders, and regulations. YHA may be asked to provide further information on how the proposed conversion will meet civil rights requirements including, but not limited to, how the proposed conversion will: meet the applicable site and neighborhood requirements; provide housing in the most integrated setting appropriate to the needs of qualified persons with disabilities in accordance with 24 CFR § 8.4(d); and affirmatively further fair housing.

In addition, any substantial change to the conversion plan is required to undergo the significant amendment process or other HUD review if the substantial changes involve a transfer of assistance, a change in the number of assisted units, or a change in eligibility or preferences for new applicants.

**Moving-To-Work (MTW) Agencies.** If an MTW agency chooses to convert assistance to PBRA under this Demonstration, the covered project(s) will no longer be included as part of the PHA's MTW program. If an MTW agency chooses to convert assistance to PBV, the covered project(s) will continue to be included in the PHA's MTW program. However, in the event that there's a conflict between the MTW Agreement and this final Notice, this final Notice will prevail for the covered project and HUD will work with the PHA to amend any of its MTW Agreements as needed.

**Outstanding Debt Incurred Under Section 4 of the Act.** For any outstanding principal balance and interest due on loans held by HUD issued to finance original development or modernization of the covered project under Section 4 of the Act, HUD will exercise its waiver authority under Section 4 of the Act to forgive the loan upon conversion.

**Resident Opportunities and Self Sufficiency Service Coordinators (ROSS-SC) and Public Housing Family Self-Sufficiency (PH FSS) programs.** So that residents currently participating in ROSS-SC or PH FSS may continue to do so upon conversion, HUD is waiving provisions in section 34 of the Act that limit ROSS-SC and PH FSS to Public Housing. Additionally, PHAs may not terminate or withhold assistance for noncompliance with the FSS contract for PH FSS

participants who convert to the HCV FSS program; as such, HUD is waiving 24 CFR 984.303(b)(5)(iii) for these participants.

**Public Housing Assessment System (PHAS).** Upon issuance of a CHAP, all public housing units covered by the CHAP shall not be issued scores for the fiscal year in which the CHAP was issued, nor any subsequent fiscal year until such time as conversion, at which point the units shall be subject to applicable Section 8 program requirements. If HUD revokes the CHAP, HUD reserves the right to reassess and rescore all PHAS indicators and issue a new PHAS score and designation for all fiscal years concerning these units covered by the CHAP. HUD is therefore waiving 24 CFR 902, Subpart A in order to effectuate this treatment.

Immediately after the issuance of the CHAP, PHAs must identify the units covered by a CHAP by submitting an application in the Inventory Removals module in PIC as either “RAD Conversion PBV” or “RAD Conversion PBRA.”

**Section 33 Required Conversion Review.** While Section 33 of the Act would require that YHA annually review its inventory to identify projects that should undergo the Required conversion process, YHA will not be required to assess projects that have been issued a CHAP or are covered by a Portfolio or Multi-phase Award because HUD considers the RAD conversion process to fulfill the requirements of Section 33 of the Act. Accordingly, HUD is waiving 24 CFR 972, Subpart A for projects covered by a CHAP, a Portfolio Award, or a Multi-phase Award.

### **Special Provisions Affecting Conversions to PBVs**

Under the Demonstration, HUD has the authority to waive statutory and regulatory provisions governing the PBV program, or to establish alternative requirements for the effective conversion of assistance. Additionally, the RAD statute imposes certain unique requirements.

Listed below are the “special” requirements applicable to public housing projects converting assistance to long-term PBVs under the first component of the Demonstration, with reference to the affected statute and/or regulation, where applicable. Special requirements are grouped into four categories: Project Selection, Contract Terms, Resident Rights and Participation, and Other Miscellaneous Provisions. All other regulatory and statutory requirements of the PBV program in 24 CFR Part 983 and section 8(o)(13) of the Act shall apply, including resident choice, environmental review, relocation assistance, and fair housing requirements.

### **PBV Project Selection**

- 1. Maximum Amount of PBV assistance.** Covered projects do not count against the maximum amount of assistance YHA may utilize for the PBV program, which is currently set at 20 percent of the amount of budget authority allocated to YHA under

the Housing Choice Voucher program. To implement this provision, HUD is waiving section 8(o)(13)(B) of the Act as well as 24 CFR § 983.6.

**2. Cap on the Number of PBV Units in Each Project.** The 25 percent limitation on the number of units that may receive PBV assistance in a project is increased to 50 percent. An assisted household cannot be involuntarily displaced as a result of this provision. An owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families receiving supportive services, or are within single-family properties. For applicable program rules for complying with the supportive services exception, see 24 CFR § 983.56(b)(2)(II)(B).

For purposes of RAD, the requirement that a family must actually receive services to reside in the excepted unit has been modified. Families living in units subject to a proposed RAD conversion must be given the option to receive supportive services. If such services are declined by the household, the unit shall remain under the HAP contract, the household shall not be terminated from the PBV program, and the decision to decline an offer to receive supportive services shall not represent a ground for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services shall apply in accordance with 24 CFR §§ 983.56, 983.257(c), 983.261(a) and (d).

To implement these provisions, HUD is waiving section 8(o)(13)(D) of the Act, as well as related provisions of 24 CFR §§ 983.56, 983.257(c), 983.261(a) and (d) for initial occupancy in the RAD converted project.

- 3. Owner Proposal Selection Procedures.** Selections of covered projects shall be made in accordance with program requirements outlined in PIH 2012-32 rev 1. To implement this provision, HUD is waiving 24 CFR § 983.51.
- 4. Site selection – Compliance with PBV Goals, section 8(o)(13)(C)(ii) of the Act and 24 CFR § 983.57(b)(1) and (c).** HUD waives these provisions having to do with deconcentration of poverty and expanding housing and economic opportunity, for the existing site.

### **PBV Contract Terms**

- 1. Length of Contract.** Covered projects shall have an initial HAP term of at least 15 years (up to 20 years upon request of the YHA and with approval by the agency

administering the vouchers). To implement this provision, HUD is waiving section 8(o)(13)(F) of the Act (which establishes a maximum term of 15 years) as well as 24 CFR § 983.205(a) (which governs contract term). Owners of covered projects are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the contract and may not reduce the number of assisted units without HUD approval. Any HUD approval of a YHA's request to reduce the number of assisted units under the contract shall be subject to conditions that HUD may impose.

- 2. Mandatory Contract Renewal.** By statute, upon contract expiration, the agency administering the vouchers shall offer, and the YHA shall accept, renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal. Consequently, section 8(o)(13)(G) of the Act, as well as 24 CFR § 983.205(b), governing the YHA discretion to renew the contract for terms of up to 15 years, will not apply.
- 3. Ownership or Control.** Pursuant to the RAD statute, during the initial term and all renewal terms of the HAP contract, HUD will require ownership or control of assisted units by a public or non-profit entity. However, as HUD, in its sole discretion, determines necessary pursuant to foreclosure, bankruptcy, or termination and transfer of assistance for material violations of, or default under, the HAP contract, HUD will require ownership or control of assisted units in the following priority: (1) a capable public entity; and (2) a capable non-public entity (e.g., a private entity), as determined by the Secretary. HUD may allow ownership of the project to be transferred to a for-profit entity to facilitate such entity's use of tax credits, but only if the YHA preserves its interest in the property in a manner approved by the Secretary. All current and future ownership entities are subject to the eligibility requirements of Section 1.3 of PIH 2012-32 rev1, including the civil rights threshold requirements.
- 4. RAD Use Agreement.** Pursuant to the RAD statute, covered projects shall have an initial RAD Use Agreement that:
  - a. Will be recorded superior to other liens on the property;
  - b. Will run for the same term as the initial HAP contract, automatically renew upon extension or renewal of the HAP contract for a term that runs with the renewal term of the HAP contract, and remain in effect even in the case of abatement or termination of the HAP contract (for the term the HAP contract would have run, absent the abatement or termination), unless the Secretary

provides approval for the RAD Use Agreement to be terminated when an owner requests a transfer of assistance;

- c. Requires that in the event that the HAP contract is removed due to breach, noncompliance or insufficiency of Appropriations, for all units previously covered under the HAP contract, new tenants must have incomes at or below 80 percent of the area median income (AMI) at the time of admission and rents may not exceed 30% of 80% of median income for an appropriate size unit for the remainder of the term of the RAD Use Agreement; and
- d. Requires compliance with all applicable fair housing and civil rights requirements, including the obligation to affirmatively further fair housing and all applicable site selection and neighborhood standards requirements.

**5. Initial Contract Rent Setting.** HUD has calculated initial contract rents for every public housing project based on each project's subsidy under the public housing program. (See Attachment 1C for a full description of the methodology.) For all RAD applications received prior to December 31, 2013, including applications for Portfolio or Multi-phase Awards, this calculation is based on FY 2012 funding for each public housing project.<sup>1</sup> Accordingly, these rents will be established in HAP contracts for any conversions that occur in calendar year (CY) 2013. For applications received in CY 2013 where the conversion closes in CY 2014 or later, the HAP contract will carry these rents adjusted by the Operating Cost Adjustment Factor (OCAF).

Notwithstanding HUD's calculation, initial PBV contract rents are subject to the statutory and regulatory PBV requirements governing contract rents (see 24 CFR § 983.301). To this effect, initial contract rents cannot exceed the lower of: (a) the reasonable rent (as defined under 24 CFR § 983.303); (b) an amount determined by the YHA, not to exceed 110 percent of the applicable FMR (or applicable exception payment standard), minus any utility allowance; or (c) the rent requested by the owner.

Within these parameters, PHAs have additional discretion in establishing initial contract rents using the following flexibilities:

- a. **MTW Fungibility.** MTW agencies may use their MTW block grant funds to set their initial contract rents, subject to applicable program caps. The agency must use existing voucher funding to supplement rents (no additional voucher

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<sup>1</sup> FY 2012 funding calculation adds back in the Operating Subsidy Allocation Adjustment.

funding will be provided). MTW agencies may only exercise this flexibility to set initial contract rents when they have submitted an application for two or more projects. Any use of MTW block grant funds in setting initial contract rents shall be subject to subsidy layering review and MTW continued service requirements, as calculated using the MTW Baseline Methodology described in PIH Notice 201302.

- b. Rent Bundling.** PHAs may adjust subsidy (and contract rents) across multiple projects as long as the YHA does not exceed the aggregate subsidy for all of the projects the YHA has submitted for conversion under RAD. This use, which HUD refers to as “bundled” rents, is permissible when a YHA submits applications for two or more projects. There is no limit to the number of projects that a YHA may bundle.

For example, assume that NRHA is considering bundling two identical projects, both consisting of 100 units. In Project A, the contract rent is \$500 and the subsidy is \$200; and in Project B, the contract rent is \$600 and the subsidy is \$300. The YHA could bundle the two projects such that the rent at both projects will be \$550 and the subsidy provided to each project is \$250.

- c. Future Replacement Housing Factor (RHF) funds.** PHAs that are scheduled to receive ongoing RHF funding in future years may choose to forgo any ongoing RHF grants and repurpose the foregone subsidy to augment the RAD rent. See Attachment 1C for the calculation of how foregone RHF funding may augment the RAD rent.

- 6. Method of Adjusting Contract Rents.** Contract rents will be adjusted annually by HUD’s OCAF at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term. As such, section 8(o)(13)(I) of the Act and 24 CFR §§ 983.301 and 983.302, concerning rent determinations, shall not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in private market, as determined by the Contract Administrator in accordance 24 CFR § 983.303. However, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract.

- 7. Transfer of Assistance.** Pursuant to the RAD statute, in order to facilitate the financing, development, and preservation of decent, safe, and affordable housing, with HUD and lender and/or investor approval, after consultation with residents, and

consistency with the Consolidated Plan, YHA (as owner) may transfer part or all of a rental assistance contract and a RAD Use Agreement to unassisted units owned or controlled by a public or non-profit entity. HUD may only approve a transfer if the project is economically non-viable, physically obsolete, severely distressed, or uninhabitable due to unforeseen circumstances such as natural disasters, or the transfer is in the best interest of the project's residents. YHA may only request a transfer of assistance at conversion or after 10 years from the effective date of the initial contract (unless a transfer is needed sooner as a result of a natural disaster). A project to which assistance is transferred is subject to all of the contract terms as described in the HAP, RAD Conversion Commitment (RCC) (see section 1.12), and Use Agreement, as well as all applicable site and neighborhood standards (including, but not limited to, site selection requirements of the Fair Housing Act and Title VI of the Civil Rights Act of 1964, including implementing regulations at 24 CFR §§ 1.4(b)(3) and 983.57). Any transfer of assistance at the time of initial conversion must be included in the significant amendment to the YHA's Annual Plan.

- 8. RAD Rehab Assistance.** Units that are not occupied and will be undergoing rehabilitation or construction as identified in the approved Financing Plan and RAD Conversion Commitment will be eligible for assistance equal to the Public Housing Operating Fund and the Capital Fund amounts that formed the basis for the calculation of initial contract rents (see Attachment 1C). During the period of rehabilitation or construction as identified in the approved Financing Plan and RCC, the maximum RAD Rehab Assistance YHA may receive (i.e. for occupied units, units eligible for vacancy payments, or units eligible for Rehab Assistance Payments) is limited to the number of units eligible for Operating Fund subsidy prior to conversion. As a result, not all units

### **PBV Resident Rights and Participation**

- 1. No Re-screening of Tenants upon Conversion.** Pursuant to the RAD statute, at conversion, current households are not subject to rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR § 982.201, concerning eligibility and targeting, will not apply for current households. Once that remaining household moves out, the unit must be leased to an eligible family.
- 2. Right to Return.** Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to an assisted unit at

the development once rehabilitation or construction is completed. Where the transfer of assistance to a new site is warranted and approved (see Section 1.6.B.7 and Section 1.7.A.8 of PIH 2-12-32 rev1 on conditions warranting a transfer of assistance), residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete. Residents of a development undergoing conversion of assistance may voluntarily accept YHA or Owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.

- 3. Renewal of Lease.** Under current regulations at 24 CFR § 983.257(b)(3), upon lease expiration, YHA can choose not to renew the lease, without good cause. In such a case, the regulatory consequence is the loss of the assisted unit. Under RAD, the YHA must renew all leases upon lease expiration, unless cause exists. Consequently, 24 CFR § 983.257(b)(3) will not apply. This provision must be incorporated by the PBV owner into the tenant lease or tenancy addendum, as appropriate.
- 4. Phase-in of Tenant Rent Increases.** If a tenant's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over 3 or 5 years. To implement this provision, HUD is waiving section 3(a)(1) of the Act, as well as 24 CFR § 983.3 (definition of "total tenant payment" (TTP)) only to the extent necessary to allow for the phase-in of tenant rent increases. YHA must create a policy setting the length of the phase in period at three years, five years or a combination depending on circumstances. For example, YHA may create a policy that uses a three year phase-in for smaller increases in rent and a five year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion.

#### YHA Policy

YHA will use the three (3) year phase in during the conversion

The below method explains the set percentage-based phase-in an owner must follow according to the phase-in period established. For purposes of this section "standard TTP" refers to the TTP calculated in accordance with regulations at 24 CFR §5.628 and the "most recently paid TTP" refers to the TTP recorded on line 9j of the family's most recent HUD Form 50058

Three Year Phase-in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33% of difference between most recently paid TTP and the standard TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) prior to Year 3 AR – 66% of difference between most recently paid TTP and the standard TTP
- Year 3: Year 3 AR and all subsequent recertifications – Full standard

*Please Note:* In either the three year phase-in or the five-year phase-in, once the standard TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward.

**5. Public Housing Family Self Sufficiency (PH FSS) and Resident Opportunities and Self Sufficiency Service Coordinator (ROSS-SC) programs.** Current PH FSS participants will continue to be eligible for FSS once their housing is converted under RAD, and PHAs will be allowed to use any PH FSS funds granted previously or pursuant to the FY 2013 PH FSS NOFA, to serve those FSS participants who live in units converted by RAD and who will as a result be moving to the HCV FSS program, subject to the following:

- a. If YHA has an HCV FSS program, YHA must convert the PH FSS program participants at the covered project to their HCV FSS program. Please see future FSS Notices of Funding Availability and other guidance for additional details, including FSS coordinator funding eligibility of PHAs under a RAD conversion.
- b. If YHA does not have an HCV FSS program, the YHA must establish an HCV FSS program and convert the PH FSS program participants at the covered project into their HCV FSS program. PHAs are not required to offer enrollment in FSS to residents in converting projects and other HCV participants, other than to residents in converting projects that were enrolled in the PH FSS program. Please see future FSS Notices of Funding Availability and other guidance for additional details, including FSS coordinator funding eligibility of PHAs under a RAD conversion.

All PHAs will be required to administer the FSS program in accordance with FSS regulations at 24 CFR Part 984 and in accordance with the participants' contracts of participation. However, residents who were converted from the PH FSS program to the HCV FSS program through RAD may not be terminated from the HCV FSS program or have HCV assistance withheld due

to the participant's failure to comply with the contract of participation. Consequently, 24 CFR 984.303(b)(5)(iii) does not apply to FSS participants in converted properties.

Current ROSS-SC grantees will be able to finish out their current ROSS-SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future public housing ROSS-SC grants, nor will its residents be eligible to be served by future public housing ROSS-SC grants.

- 6. Resident Participation and Funding.** In accordance with PIH 2012-32 rev1 Attachment 1B, residents of covered projects converting assistance to PBVs will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.
- 7. Resident Procedural Rights.** The following items must be incorporated into both the Section 8 Administrative Plan and the owner's lease, which includes the required tenancy addendum, as appropriate. Evidence of such incorporation may be requested by HUD for purposes of monitoring the program.
  - a. Termination Notification.** HUD is incorporating additional termination notification requirements to comply with section 6 of the Act for public housing projects that convert assistance under RAD. In addition to the regulations at 24 CFR § 983.257, related to owner termination of tenancy and eviction, as modified by the waiver in Section 1.6(C)(3) above, the termination procedure for RAD conversions to PBV will require that YHA provide adequate written notice of termination of the lease which shall not be less than:
    - i.** A reasonable period of time, but not to exceed 30 days:
      - If the health or safety of other tenants, YHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
      - In the event of any drug-related or violent criminal activity or any felony conviction;
    - ii.** 14 days in the case of nonpayment of rent; and
    - iii.** 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.

- b. Grievance Process.** HUD is incorporating additional procedural rights to comply with the requirements of section 6 of the Act.

For issues related to tenancy and termination of assistance, PBV program rules require the YHA to provide an opportunity for an informal hearing, as outlined in 24 CFR § 982.555. RAD will waive 24 CFR § 982.555(b) in part, which outlines when informal hearings are not required, and require that:

- i.** In addition to reasons that require an opportunity for an informal hearing given in 24 CFR § 982.555(a)(1)(i)-(vi),<sup>2</sup> an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to YHA (as owner) action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.
  - For any hearing required under 24 CFR § 982.555(a)(1)(i)-(vi), the contract administrator will perform the hearing, as is the current standard in the program.
  - For any additional hearings required under RAD, the YHA (as owner) will perform the hearing.
- ii.** An informal hearing will not be required for class grievances or to disputes between residents not involving the YHA (as owner) or contract administrator. This hearing requirement shall not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the YHA (as owner) or contract administrator.
- iii.** The YHA (as owner) give residents notice of their ability to request an informal hearing as outlined in 24 CFR § 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR § 982.555(a)(1)(i)-(vi).
- iv.** The YHA (as owner) provide opportunity for an informal hearing before an eviction.

Current PBV program rules require that hearing procedures must be outlined in the YHA's Section 8 Administrative Plan.

- 8. Earned Income Disregard (EID).** Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the

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<sup>2</sup> § 982.555(a)(1)(iv) is not relevant to RAD as the tenant-based certificate has been repealed.

EID after conversion, in accordance with regulations at 24 CFR § 5.617. Upon the expiration of the EID for such families, the rent adjustment shall not be subject to rent phase-in, as described in PIH 2013-32 rev1 Section 1.6.C.4; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time.

Under the Housing Choice Voucher program, the EID exclusion is limited to only persons with disabilities (24 CFR § 5.617(b)). In order to allow all tenants (including non-disabled persons) who are employed and currently receiving the EID at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in section 5.617(b) limiting EID to only disabled persons is waived. The waiver and resulting alternative requirement only applies to tenants receiving the EID at the time of conversion. No other tenant (e.g., tenants who at one time received the EID but **are** not receiving the EID exclusion at the time of conversion (e.g., due to loss of employment); tenants that move into the property following conversion, etc.) is covered by this waiver.

- 9. Capital Fund Education and Training Community Facilities (CFCF) Program.** CFCF provides capital funding to PHAs for the construction, rehabilitation, or purchase of facilities to provide early childhood education, adult education, and job training programs for public housing residents based on an identified need. Where a community facility has been developed under CFCF in connection to or serving the residents of an existing public housing project converting its assistance under RAD, residents will continue to qualify as “YHA residents” for the purposes of CFCF program compliance. To the greatest extent possible the community facility should continue to be available to public housing residents

### **PBV: Other Miscellaneous Provisions**

- 1. Access to Records, Including Requests for Information Related to Evaluation of Demonstration.** PHAs must agree to any reasonable HUD request for data to support program evaluation, including but not limited to project financial statements, operating data, Choice-Mobility utilization, and rehabilitation work. Please see Appendix IV for reporting units in Form HUD-50058.
- 2. Additional Monitoring Requirement.** The YHA’s Board must approve the operating budget for the covered project annually in accordance with HUD requirements.
- 3. Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** Under existing PBV program rules, projects that qualify as

“existing housing” under 24 CFR § 983.52(a) are not subject to Davis-Bacon (prevailing wages, the Contract Work Hours and Safety Standards Act, and other related regulations, rules, and requirements) or Section 3 (24 CFR Part 135). However, the Davis-Bacon Act and Section 3 shall apply to all initial repairs that are identified in the Financing Plan to the extent that such repairs qualify as construction or rehabilitation, regardless of whether the project qualifies as “existing housing.” Developmental requirements under 24 CFR § 983.154 and fair housing provisions under 24 CFR § 983.152(c)(vi) continue to apply.

- 4. Establishment of Waiting List.** In establishing the waiting list for the converted project, the YHA shall utilize the project-specific waiting list that existed at the time of conversion, unless the assistance is being transferred to another neighborhood. If a project-specific waiting list does exist, but the YHA is transferring the assistance to another neighborhood, the YHA must notify applicants on the wait-list of the transfer of assistance, and on how they can apply for residency at the new project site or other sites. Applicants on a project-specific waiting list for a project where the assistance is being transferred shall have priority on the newly formed waiting list for the new project site in accordance with the date and time of their application to the original project's waiting list. In addition, the waiting list must be established and maintained in accordance with PBV program requirements.

If a project-specific waiting list for the project does not exist, the YHA shall establish a waiting list in accordance 24 CFR § 903.7(b)(2)(ii)-(iv) to ensure that applicants on the YHA’s public housing community-wide waiting list have been offered placement on the converted project’s initial waiting list. For the purpose of establishing the initial waiting list, PHAs have the discretion to determine the most appropriate means of informing applicants on the public housing waiting list given the number of applicants, YHA resources, and community characteristics of the proposed conversion under RAD. Such activities should be pursuant to the YHA’s policies for waiting list management, including the obligation to affirmatively further fair housing.

A YHA may consider contacting every applicant on the public housing waiting list via direct mailing; advertising the availability of housing to the population that is less likely to apply, both minority and non-minority groups, through various forms of media (e.g., radio stations, posters, newspapers) within the marketing area, informing local non-profit entities and advocacy groups (e.g., disability rights groups); and conducting other outreach as appropriate. Applicants on the agency’s centralized public housing waiting list who wish to be placed onto the newly-established waiting list are done so in accordance with the date and time of their original application to the centralized public housing waiting list. Any activities to contact applicants on the public housing waiting list must be conducted accordance with the requirements for

effective communication with persons with disabilities at 24 CFR § 8.6 and the obligation to provide meaningful access for persons with limited English proficiency (LEP).

To implement this provision, HUD is waiving 24 CFR § 983.251(c)(2). However, after the initial waiting list has been established, the YHA shall administer its waiting list for the converted project in accordance with 24 CFR § 983.251(c).

- 5. Mandatory Insurance Coverage.** The project shall maintain at all times commercially available property and liability insurance to protect the project from financial loss and, to the extent insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project, except with the written approval of HUD to the contrary.
- 6. Agreement Waiver.** For public housing conversions to PBV, there will be no Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the Agreement (AHAP), including regulations under 24 CFR Part 983 Subpart D are waived.
- 7. Future Refinancing.** Owners must receive HUD approval for any refinancing or restructuring of permanent debt within the HAP contract term to ensure the financing is consistent with long-term preservation. (Current lenders and investors are also likely to require review and approval of refinancing of the primary permanent debt.)
- 8. Administrative Fees for Public Housing Conversions.** For the initial Calendar Year in which a project's assistance has been converted, RAD PBV projects will be funded with public housing money. Since the public housing funding will not have been transferred to the TBRA account and since this funding is not section 8 assistance the annual contributions contract (ACC) between the YHA and HUD will cover the project units, but be for zero dollars. For this transition period, the ACC will primarily serve as the basis for covering the units and requiring YHA compliance with HUD requirements, but it will not be (as it is in the regular PBV program) the funding vehicle for the PBV RAD vouchers. Given this, and given the fact that PHAs will be receiving full public housing funding for the PBV units during this transition period, PHAs will not receive ongoing section 8 administrative fee funding during this time.

Generally, PHAs receive ongoing administrative fees for units under a HAP contract, consistent with recent appropriation act references to "section 8(q) of the [United

States Housing Act of 1937] and related appropriations act provisions in effect immediately before the Quality Housing and Responsibility Act of 1998" and 24 CFR 982.152(b). During the transition period mentioned in the preceding paragraph, these provisions are waived, and PHAs will not receive section 8 ongoing administrative fees for PBV RAD units.

After this transition period, the ACC will be amended to include section 8 funding that corresponds to the units covered by the ACC. At that time, the regular section 8 administrative fee funding provisions will apply.

### **17.1.X. YHA INFORMATION TO ACCEPTED FAMILIES [24 CFR 983.252]**

Before a family accepts an offer of PBV assistance, YHA will give the family the similar information provided in the YHA tenant-based program. This will include an oral briefing with a description of how the program works and Family and owner responsibilities, and a packet with information on how YHA determines the total tenant payment for a family, family obligations under the program; and applicable fair housing information.

***Providing Information for Persons with Disabilities.*** If the family head or spouse is a disabled person, YHA will take appropriate steps to assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet, including alternative formats.

***Providing Information for Persons with Limited English Proficiency.*** YHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with obligations contained in Title VI of the Civil Rights Act of 1964 and Executive Order 13166.

### **17.1.Y. OWNER SELECTION OF TENANTS [24 CFR 983.253, 983.255]**

During the term of the HAP contract, the owner must lease contract units only to eligible families selected and referred by YHA from the YHA waiting list.

The owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to perform the lease obligations. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection. The contract unit leased to each family must be appropriate for the size of the family under the YHA's subsidy standards.

### **17.1.Z. VACANCIES [24 CFR 983.254]**

As in the tenant-based program, YHA and the owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy. The owner must promptly notify the YHA of any vacancy or expected vacancy in a contract unit. After receiving the owner notice, YHA will make every reasonable effort to refer promptly a sufficient number of families for the owner to fill such vacancies. The owner must lease vacant contract units only to eligible families on YHA waiting list referred by the YHA.

*Reducing the Number of Contract Units.* If any contract units have been vacant for a period of 120 or more days since owner notice of vacancy (and notwithstanding the reasonable good faith efforts of the YHA to fill such vacancies), YHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (by number of bedrooms) that have been vacant for such period.

### **17.1.AA. DETERMINING AND RE-DETERMINING THE RENT TO OWNER [24 CFR 983.301 - .302]**

*Initial and redetermined rents.* The amount of the initial and redetermined rent to owner is determined in accordance with section §983.301 and §983.302.

The amount of the initial rent to owner is established at the beginning of the HAP contract term. For rehabilitated or newly constructed housing, the Agreement states the estimated amount of the initial rent to owner, but the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

The rent to owner is redetermined at the owner's request for a rent increase in accordance with this section and §983.302. The rent to owner is also redetermined at such time when there is a five percent or greater decrease in the published FMR in accordance with §983.302.

*Amount of rent to owner.* Except for certain tax credit units as provided in this section, the rent to owner must not exceed the lowest of:

- (1) An amount determined by the YHA, not to exceed 110 percent of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance;
- (2) The reasonable rent; or
- (3) The rent requested by the owner.

*Rent to owner for certain tax credit units.* This section applies if:

- A contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986 (see 26 U.S.C. 42);

- The contract unit is not located in a qualified census tract;
- In the same building, there are comparable tax credit units of the same unit bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds the applicable fair market rental (or any exception payment standard) as determined in accordance with paragraph (b) of this section.

In the case of a contract unit described in this section, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

The “tax credit rent” is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (*e.g.*, additional assistance such as tenant-based voucher assistance).

A “qualified census tract” is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which:

- At least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI); or
- Where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

***Rent to owner for other tax credit units.*** Except in the case of a tax-credit unit described in paragraph 983.301(c)(1) of the regulation, the rent to owner for all other tax credit units may be determined by the YHA pursuant to the regulations.

***Reasonable rent.*** The YHA shall determine the reasonable rent in accordance with §983.303. The rent to the owner for each contract unit may at no time exceed the reasonable rent, except in cases where, the YHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. If the YHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

***Use of FMRs and utility allowance schedule in determining the amount of rent to owner—***  
***(1) Amounts used. (i) Determination of initial rent (at beginning of HAP contract term).*** When determining the initial rent to owner, the YHA shall use the most recently published FMR in

effect and the utility allowance schedule in effect at execution of the HAP contract. At its discretion, the YHA may use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract.

***Redetermination of rent to owner.*** When redetermining the rent to owner, the YHA shall use the most recently published FMR and the YHA utility allowance schedule in effect at the time of redetermination. At its discretion, the YHA may use the amounts in effect at any time during the 30-day period immediately before the redetermination date.

***Exception payment standard and YHA utility allowance schedule.*** Any HUD-approved exception payment standard amount under 24 CFR 982.503(c) applies to both the tenant-based and project-based voucher programs. HUD will not approve a different exception payment standard amount for use in the PBV program. The YHA may not establish or apply different utility allowance amounts for the PBV program. The same YHA utility allowance schedule applies to both the tenant-based and PBV programs.

***YHA-owned units.*** For YHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the annual anniversary of the HAP contract are determined by the independent entity approved by HUD in accordance with §983.59. The YHA must use the rent to owner established by the independent entity.

**Redetermination of rent to owner. (24CFR §983.302)**

The YHA must redetermine the rent to owner:

- (1) Upon the owner's request; or
- (2) When there is a five percent or greater decrease in the published FMR in accordance with §983.301.

***Rent increase.*** The YHA may not make any rent increase other than an increase in the rent to owner as determined pursuant to §983.301. (Provisions for special adjustments of contract rent pursuant to 42 U.S.C. 1437f(b)(2)(B) do not apply to the voucher program.)

The owner must request an increase in the rent to owner at the annual anniversary of the HAP contract by written notice to the YHA. The length of the required notice period of the owner request for a rent increase at the annual anniversary may be established by the YHA. The request must be submitted in the form and manner required by the YHA.

The YHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with all requirements of the HAP contract, including compliance with the HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

***Rent decrease.*** If there is a decrease in the rent to owner, as established in accordance with §983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.

If the YHA has elected within the HAP contract to not reduce rents below the initial rent to owner, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract, except:

- To correct errors in calculations in accordance with HUD requirements;
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to §983.55; or
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

***Notice of rent redetermination.*** Rent to owner is redetermined by written notice by the YHA to the owner specifying the amount of the redetermined rent (as determined in accordance with §§983.301 and 983.302). The YHA notice of the rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract.

***Contract year and annual anniversary of the HAP contract.*** The contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. The adjusted rent to owner amount applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

See §983.207(c) for information on the annual anniversary of the HAP contract for contract units completed in stages.

#### **17.1.BB. REASONABLE RENT [24 CFR 983.303].**

***Comparability requirement.*** At all times during the term of the HAP contract, the rent to the owner for a contract unit may not exceed the reasonable rent as determined by the YHA, except that where the YHA has elected in the HAP contract to not reduce rents below the initial rent under the initial HAP contract, the rent to owner shall not be reduced below the initial rent in accordance with §983.302(e)(2).

***Redetermination.*** The YHA must redetermine the reasonable rent:

- (1) Whenever there is a five percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect one year before the contract anniversary;

- (2) Whenever the YHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- (3) Whenever the HAP contract is amended to substitute a different contract unit in the same building or project; and
- (4) Whenever there is any other change that may substantially affect the reasonable rent.

***How to determine reasonable rent.*** The reasonable rent of a contract unit must be determined by comparison to rent for other comparable unassisted units.

In determining the reasonable rent, the YHA must consider factors that affect market rent, such as:

- The location, quality, size, unit type, and age of the contract unit; and
- Amenities, housing services, maintenance, and utilities to be provided by the owner.

***Comparability analysis.*** For each unit, the YHA comparability analysis must use at least three comparable units in the private unassisted market, which may include comparable unassisted units in the premises or project. The YHA must retain a comparability analysis that shows how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units. The comparability analysis may be performed by YHA staff or by another qualified person or entity. A person or entity that conducts the comparability analysis and any YHA staff or contractor engaged in determining the housing assistance payment based on the comparability analysis may not have any direct or indirect interest in the property.

***Owner certification of comparability.*** By accepting each monthly housing assistance payment from the YHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the YHA information requested by the YHA on rents charged by the owner for other units in the premises or elsewhere.

***Determining reasonable rent for YHA-owned units.*** For YHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with §983.59, rather than by the YHA. The reasonable rent must be determined in accordance with this section. The independent entity must furnish a copy of the independent entity determination of reasonable rent for YHA-owned units to the YHA and to the HUD field office where the project is located.

#### **17.1.CC. OTHER SUBSIDY: EFFECT ON RENT TO OWNER [24 CFR 983.304]**

***General.*** In addition to the rent limits established in accordance with §983.301 and 24 CFR 982.302, the following restrictions apply to certain units.

**HOME.** For units assisted under the HOME program, rents may not exceed rent limits as required by the HOME program (24 CFR 92.252).

**Subsidized projects.** This paragraph (c) applies to any contract units in any of the following types of federally subsidized project:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

The rent to owner may not exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal program listed in paragraph (c)(1) of this section.

**Combining subsidy.** Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements. See §983.55.

**Other subsidy: rent reduction.** To comply with HUD subsidy layering requirements, at the direction of HUD or its designee, a YHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized financing.

**Prohibition of other subsidy.** For provisions that prohibit PBV assistance to units in certain types of subsidized housing, see §983.54.

### **Rent to owner: effect of rent control and other rent limits. (24CFR §983.305)**

In addition to the limitation to 110 percent of the FMR in §983.301(b)(1), the rent reasonableness limit under §§983.301(b)(2) and 983.303, the rental determination provisions of §983.301(f), the special limitations for tax credit units under §983.301(c), and other rent limits under this part, the amount of rent to owner also may be subject to rent control or other limits under local, state, or federal law.

### **17.1.DD. YHA PAYMENT TO OWNER OF OCCUPIED UNIT [24 CFR 983.351]**

**When payments are made.** During the term of the HAP contract, the YHA shall make housing assistance payments to the owner in accordance with the terms of the HAP contract. The payments shall be made for the months during which a contract unit is leased to and actually

occupied by an eligible family. Except for discretionary vacancy payments in accordance with §983.352, the YHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

**Monthly payment.** Each month, the YHA shall make a housing assistance payment to the owner for each contract unit that complies with the HQS and is leased to and occupied by an eligible family in accordance with the HAP contract.

**Calculating amount of payment.** The monthly housing assistance payment by the YHA to the owner for a contract unit leased to a family is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

**Prompt payment.** The housing assistance payment by the YHA to the owner under the HAP contract must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the YHA agree on a later date.

**Owner compliance with contract.** To receive housing assistance payments in accordance with the HAP contract, the owner must comply with all the provisions of the HAP contract. Unless the owner complies with all the provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

#### **17.1.EE. VACANCY PAYMENT [24 CFR 983.352.]**

**Payment for move-out month.** If an assisted family moves out of the unit, the owner may keep the housing assistance payment payable for the calendar month when the family moves out (“move-out month”). However, the owner may not keep the payment if YHA determines that the vacancy is the owner's fault.

**Vacancy payment at YHA discretion.** At the discretion of YHA, the HAP contract may provide for vacancy payments to the owner (in the amounts determined in accordance with the regulations for an YHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month.

The vacancy payment to the owner for each month of the maximum two-month period will be determined by YHA, and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment may cover only the period the unit remains vacant.

YHA may make vacancy payments to the owner only if:

- The owner gives YHA prompt, written notice certifying that the family has vacated the unit and containing the date when the family moved out (to the best of the owner's knowledge and belief);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by YHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by YHA and must provide any information or substantiation required by YHA to determine the amount of any vacancy payment.

#### **17.1.FF. TENANT RENT: PAYMENT TO OWNER [24 CFR 983.353]**

***YHA determination.*** The tenant rent is the portion of the rent to owner paid by the family. YHA determines the tenant rent in accordance with HUD requirements. Any changes in the amount of the tenant rent will be effective on the date stated in a notice by YHA to the family and the owner.

***Tenant payment to owner.*** The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent as determined by YHA is the maximum amount the owner may charge the family for rent of a contract unit. The tenant rent is payment for all housing services, maintenance, equipment, and utilities to be provided by the owner without additional charge to the tenant, in accordance with the HAP contract and lease. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by YHA. The owner must immediately return any excess payment to the tenant. The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for non-payment of YHA housing assistance payment.

***Limit of YHA responsibility.*** YHA is responsible only for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. YHA is not responsible for paying the tenant rent, or for paying any other claim by the owner. YHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the tenant rent or to pay any other claim by the owner. YHA may not make any payment to the owner for any damage to the unit, or for any other amount owed by a family under the family's lease or otherwise.

***Utility reimbursement.*** If the amount of the utility allowance exceeds the total tenant payment, YHA shall pay the amount of such excess as a reimbursement for tenant-paid utilities (“utility reimbursement”) and the tenant rent to the owner shall be zero. YHA either may pay the utility

reimbursement to the family or may pay the utility bill directly to the utility supplier on behalf of the family. If YHA chooses to pay the utility supplier directly, the YHA must notify the family of the amount paid to the utility supplier.

**17.1.GG. OTHER FEES AND CHARGES [24 CFR 983.354]**

*Meals and supportive services.* Except as provided in the regulations, the owner may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy. In assisted living developments receiving project-based assistance, owners may charge tenants, family members, or both for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

*Other charges by owner.* The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the local market or provided at no additional cost to unsubsidized tenants in the premises.