



**CITY OF WESTMINSTER OFFICE OF HOUSING SERVICES  
ADMINISTRATIVE PLAN  
HOUSING CHOICE VOUCHER PROGRAM**

**REVISED**

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## **CHAPTER 1 OVERVIEW OF THE PROGRAM AND PLAN**

### **INTRODUCTION**

The Section 8 Program was enacted as part of the Housing and Community Development Act of 1974, which recodifies the U.S. Housing Act of 1937. The Act and its requirements have been amended from time to time, as they apply to the Section 8 Housing Choice Voucher (HCV) Program and are described in and implemented throughout this Administrative Plan. The Public Housing Authority (PHA) receives its funding for the HCV Program from the U.S. Department of Housing and Urban Development (HUD). The PHA is not a federal department or agency. A PHA is a governmental or public body, created and authorized by state law to develop and operate housing programs for low-income families. The PHA enters into an Annual Contributions Contract (ACC) with HUD to administer the program requirements on behalf of HUD. The PHA must ensure compliance with federal laws, regulations, and notices, and must establish policies and procedures to clarify federal requirements and ensure consistency.

The City of Westminster's Tenant Based HCV Program is administered by the Department of Housing Services. The city's HCV program is administered in accordance with HUD's Housing Choice Voucher Program regulations, and with applicable federal, state, and local fair housing laws and regulations. The jurisdiction of the PHA is the corporate limits of the City of Westminster, Maryland. The program only includes tenant-based vouchers and not project based vouchers which may be administered by other entities in the City of Westminster.

### **HOUSING AUTHORITY MISSION STATEMENT**

The City of Westminster Office of Housing Services' mission is to proactively promote the provision of diverse affordable housing which serves as the foundation for economic opportunity and self-sufficiency for eligible low income, very low income and extremely low income persons who live or work in Westminster, Maryland.

### **LOCAL GOALS**

The City of Westminster Office of Housing Services is committed to providing excellent customer centric service to Housing Choice Voucher Program participants, owners, and to the community as we facilitate the provision of quality affordable housing.

The Housing Authority's goals include the following.

To attain and maintain a high level of standards and professionalism in our day-to-day management of all program components.

To ensure that rents paid by HCV program families are fair and reasonable.

To promote fair housing and the opportunity for low income, very low income and extremely low income families of all ethnic backgrounds to experience freedom of housing choice.

To Affirmatively Further Fair Housing in the City of Westminster.

To administer an efficient, high-performing agency through continuous improvement of the PHA's support systems and commitment to our employees and their professional development.

To ensure that all units meet **National Standards for the Physical Inspection of Real Estate (NSPIRE)**.

## **OVERVIEW OF THE HCV PROGRAM**

The purpose of the HCV Program is to provide rental assistance to eligible families. The rules and regulations of the program are determined by HUD. The PHA is afforded choices in the operation of the program, which are included in the PHA's Administrative Plan. The HCV Program offers mobility to eligible families because they may search for suitable housing anywhere in the PHA's jurisdiction and may also be eligible to move under portability to other jurisdictions.

When a family is determined to be eligible for the program and funding is available, the PHA issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, the PHA 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 PHA continues to make payments to the owner as long as the family is eligible, and the housing unit continues to qualify under the program.

To administer the HCV program, the PHA enters into a contractual relationship with HUD through the Annual Contributions Contract. The PHA 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 PHA, 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.

## **PURPOSE OF THE ADMINISTRATIVE PLAN**

The purpose of the Administrative Plan is to establish policies for carrying out the HCV Program in a manner consistent with HUD requirements and local goals and objectives contained in the agency plan. The HCV Program was implemented on October 1, 1999. The City of Westminster Department of Housing Services AKA the City of Westminster Housing Authority is responsible for complying with all changes in HUD regulations pertaining to our programs. If such changes conflict with this plan, HUD regulations will have precedence. The PHA will revise this Administrative Plan as needed to comply with changes in HUD regulations. The original Administrative Plan and any changes must be approved by the governing body of the agency, the pertinent sections included in the agency plan, and a copy provided to HUD. This Administrative Plan is a supporting document to the PHA agency plan and is available for public review as required by CFR 24 Part 903.

Administration of the HCV Program and the functions and responsibilities of PHA staff shall be in compliance with the PHA's personnel policy and HUD regulations, as well as all federal, state, and local fair housing laws and regulations. Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program (HCVP)
- 24 CFR Part 100: Discriminatory Conduct Under The Fair Housing Act
- 24 CFR Part 985: The Section 8 Management Assessment Program (SEMAP)

## **RULES AND REGULATIONS**

This Administrative Plan is set forth to define the PHA's local policies for operation of the housing programs in the context of federal laws and regulations. All issues related to the Housing Choice Voucher Program, not addressed in this document, are governed by such federal regulations, HUD memos, notices, and guidelines, or applicable law. The policies in this Administrative Plan have been designed to ensure compliance with the consolidated Annual Contributions Contract and all HUD-approved applications for program funding.

## Agency Mandatory vs Discretionary Policy

HUD makes a distinction between:

- Mandatory policies are those driven by legislation, regulations, current handbooks, notices, and legal opinions which must be followed.
- Discretionary policies are those policies that are nonbinding guidance, including guidebooks and notices that have expired.

HUD expects PHAs to adopt local policies and procedures that are consistent with mandatory policies in areas where HUD gives the PHA discretion. The PHA's Administrative Plan is the foundation of those policies and procedures. HUD's directions require PHAs to make policy choices that provide sufficient guidance to staff and ensure consistency to program applicants and participants.

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

## ADMINISTRATIVE FEE RESERVE

Expenditures from the Administrative Reserve (Operating Reserve) for other housing purposes shall require prior approval of the City of Westminster Mayor and Common Council for amounts over **\$10,000.00**.

## DEFINITIONS

The following terms are used frequently within this Administrative Plan:

- Applicant refers to a family that has applied for admission to the program but is not yet a program participant.
- Family refers to a person or group of people, as determined by the PHA, approved to reside in a unit with assistance under the HCV Program. Family may at times be used interchangeably with applicants or participant.
- HAP Contract refers to the Housing Assistance Payments contract.
- Household means the family and any PHA-approved live-in aide.
- Landlord and owner are used interchangeably within this plan.

- National Standards for the Physical Inspection of Real Estate (NSPIRE) refers to a HUD inspection standard and scoring methodology used to assess the overall condition, health, and safety of properties and units assisted or insured by HUD. NSPIRE replaces HQS.
- Non-Citizens Rule refers to the regulation restricting assistance to U.S. citizens and eligible immigrants. This regulation was effective June 19, 1995.
- PHA is the Public Housing Authority or in this case the City of Westminster Housing Authority.
- Tenant refers to a participant in terms of the relationship to landlord.
- Earned Income is defined as income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare assistance, Social Security, and other governmental subsidies/benefits), or any cash or in-kind benefits.
- Day laborer is defined as an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future.
- An independent contractor is an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code federal income tax requirements and whose earnings are consequently subject to the self-employment tax.
- A seasonal worker is defined as an individual who is: 1) hired into a short-term position (e.g., for which the customary employment period for the position is 6 months or fewer); and 2) the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the employer or industry.
- A foster adult is an adult individual that is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.
- A foster child is defined as a member of the household who meets the definition of a foster child under state law. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.

## MANAGEMENT ASSESSMENT OBJECTIVES

The City of Westminster Department of Housing Services operates its housing assistance program with efficiency and can demonstrate to HUD auditors that the PHA is using its resources in a manner that reflects its commitment to quality and service. The PHA policies and practices are consistent with the areas of measurement for the following HUD SEMAP indicators:

- Selection from the Waiting List
- Reasonable Rent
- Determination of Adjusted Income
- Utility Allowance Schedule
- HQS Quality Control Inspections
- HQS Enforcement
- Expanding Housing Opportunities
- Payment Standards
- Annual Re-examinations
- Correct Tenant Rent Calculations
- Pre-Contract HQS Inspections
- Annual HQS Inspections
- Lease-up

Supervisory quality control reviews will be performed by the City of Westminster Housing Authority's director or other qualified person other than the person who performed the initial, as required by HUD, on the following SEMAP factors:

- Selection from the waiting list
- Rent reasonableness
- Determination of adjusted income
- HQS Enforcement
- HQS Quality Control

The annual sample of files and records will be drawn in an unbiased manner, leaving a clear audit trail. The minimum sample size to be reviewed will relate directly to each factor and will be determined by HUD based on the number of vouchers.

## RECORDS FOR MONITORING PHA PERFORMANCE

To demonstrate compliance with HUD and other pertinent regulations, the City of Westminster Department of Housing Services will maintain records, reports, and other documentation in accordance with HUD requirements and in a manner that will allow an auditor, City of Westminster Department of Housing Services professionals, or other interested party to follow, monitor, and/or assess the City of Westminster Department of Housing Services' operational procedures objectively, accurately, and in accordance

with SEMAP requirements with internal supervisory audits.

## **PRIVACY RIGHTS**

Applicants and participants, including all adults in the households, are required to sign the HUD 9886 Authorization for Release of Information. This document incorporates the Federal Privacy Act Statement and describes the conditions under which HUD/PHA will release family information to third parties. The PHA's policy regarding release of information is in accordance with state and local laws, which may restrict the release of family information.

Any and all information that would lead one to determine the nature and/or severity of a person's disability will be destroyed or returned to the family after its use. Personal information must not be released except on an as-needed basis in cases where an accommodation is under consideration. All requests for access and the granting of accommodations based on this information must be approved by the Director.

The PHA'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 by authorized staff. **The City of Westminster Department of Housing Services** staff will not discuss family information contained in files, except on an as-needed basis for business reasons.

## **FAMILY OUTREACH**

The PHA will publicize and disseminate information to make known the availability of housing assistance and related services, for very low income families on a regular basis. The PHA will publicize the availability and nature of housing and program assistance for very low income families through public service announcements, press releases, and/or display ads in the local newspapers. As with any employment recruitment effort, community marketing steps will be taken so that both assisted and unassisted families are aware of the opportunity. These recruitment efforts relate to any PHA employment opportunity.

These marketing steps will include advertising in the local newspapers, posting advertising notices in our office as well as other public places, and using local radio entities to market our programs and employment opportunities.

The PHA will communicate the status of housing and service-related program availability to other service providers in the community and advise them of housing eligibility factors and guidelines in order that they can make proper referrals for housing and program assistance.

## **OWNER OUTREACH**

The PHA makes a concerted effort to keep private owners informed of legislative changes in the tenant based program, which are designed to make the program more attractive to owners. This includes informing participant owners of applicable legislative changes in program requirements.

The PHA encourages owners of decent, safe and sanitary housing units to lease to Housing Choice Voucher families.

The PHA conducts periodic meetings with participating owners to improve owner relations and to recruit new owners.

The PHA has active participation in a community based organization(s) comprised of private property and apartment owners and managers.

The PHA periodically evaluates the demographic distribution of assisted families to identify areas within the jurisdiction where owner outreach should be targeted. The purpose of these activities is to provide more choices and better housing opportunities to families. Voucher holders are informed of a broad range of areas where they may lease units inside the PHA's jurisdiction and given a list of landlords or other parties who are willing to lease units or help families who desire to live outside areas of poverty or minority concentration.

## CHAPTER 2 FAIR HOUSING AND EQUAL OPPORTUNITY

### INTRODUCTION

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

### FAIR HOUSING POLICY

Federal laws require PHAs to treat all applicants and participants equally, providing the same opportunity to access services, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. The PHA 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: Equal Opportunity in Housing
- 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 will also apply.

The PHA shall not deny any family or individual the equal opportunity to apply for or receive assistance under the **Housing Choice Voucher Programs, on the basis of race, color, religion, sex, familial status, national origin, marital status, sexual orientation, gender identity, disability, or source of income.**

To further its commitment to full compliance with applicable Civil Rights laws, the PHA will provide Federal/State/local information to Voucher holders regarding unlawful discrimination and any recourse available to families who believe they are victims of a discriminatory act. Such information will be made available during the family briefing session, and all applicable Fair Housing Information and Discrimination Complaint Forms are available upon request at the front desk. PHA staff will be available to assist any family that requests assistance in completing the Discrimination Complaint Form along with providing the toll-free number for the Housing Discrimination Hotline: 1(800) 669-9777 or **(800) 877-8339 (Relay).**

All Housing Authority staff will be provided with fair housing training and informed of the importance of affirmatively furthering fair housing and providing equal opportunity to all families, including providing reasonable accommodations to persons with disabilities, as a part of the overall commitment to quality customer service. The Housing Authority staff will also be available to provide housing counseling services to applicants/participants/ and will be able to assist in referrals to other appropriate fair housing entities. Fair Housing posters are posted throughout the Housing Authority office, including in the lobby and interview room and the equal opportunity logo will be used on all outreach materials.

Staff will attend local fair housing update training sponsored by HUD and other local organizations to keep current with new developments. When appropriate, fair housing posters and other material will be made available in Spanish in an effort to inform our non-English speaking clients.

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 PHA's facilities are inaccessible to or unusable by persons with disabilities.

## **REASONABLE ACCOMMODATIONS POLICY**

**A person with a disability may require certain types of accommodations in order to have equal access to the Program. These accommodations may include changes, exceptions, or adjustments to a rule, policy, practice, or service.**

**Federal regulations define reasonable accommodations as those that do not create an "undue financial and administrative burden" for the PHA or result in a "fundamental alteration" in the nature of the program or service offered. A fundamental alteration is a modification that changes the essential nature of a provider's operations.**

## **Definition of Reasonable Accommodation**

A reasonable accommodation is an adjustment made to a rule, policy, practice, or service that allows a person with a disability to have equal access to the HCV Program. For example, reasonable accommodations may include making home visits, extending the voucher term, or approving an exception payment standard in order for a participant to lease an accessible dwelling unit.

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

## **Types of Reasonable Accommodations**

When needed, the City of Westminster Housing Authority will modify normal procedures to accommodate the needs of a person with disabilities. Examples include:

Permitting applications and annual recertifications to be completed by mail;

Using higher payment standards if the PHA determines this is necessary to enable a person with disabilities to obtain a suitable housing unit;

Providing time extensions for locating a unit when necessary, because of a lack of availability of accessible units or special challenges of the family in seeking a unit; and

Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with PHA staff.

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that the PHA treat the information as a request for a reasonable accommodation, even if no formal request is made.

The family must explain what type of accommodation is needed to provide the person with the disability full access to the PHA’s programs and services. If the need for the accommodation is not readily apparent or known to the PHA, the family must explain the relationship between the requested accommodation and the disability. There must be an identifiable connection, or nexus, between the requested accommodation and the individual’s disability.

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

If the PHA finds that the requested accommodation creates an undue administrative or financial burden, the PHA will deny the request and/or present an alternate accommodation that will still meet the need of the person. An undue administrative burden is one that requires a fundamental alteration of the essential functions of the PHA (i.e., waiving a family obligation). An undue financial burden is one that when considering the available resources of the agency as a whole, the requested accommodation would pose a severe financial hardship on the PHA.

The PHA will provide a written decision to the person requesting the accommodation within 10 business days. If an applicant's reasonable accommodation request is denied, the applicant may request an informal review of the decision. If a participant is denied the accommodation or feels that the alternative suggestions are inadequate, they may request an informal hearing to review the PHA's decision.

### **Verification of Disability**

Before providing an accommodation, the PHA 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 PHA's programs and services.

If a person's disability is obvious or otherwise known to the PHA, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required.

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

When verifying a disability, the PHA will follow the verification policies outlined in this plan. The PHA will treat all information related to a person's disability confidentially.

In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- The PHA will obtain third-party verification 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.
- The PHA will request only information that is necessary to evaluate the disability-related need for the accommodation. The PHA will not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.

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

## **Civil Rights vs HUD Definition of Disability**

The civil rights definition of a person with a disability for purposes of granting a reasonable accommodation request is much broader than the HUD definition of disability.

A person may be entitled to a reasonable accommodation under the Program to provide equal opportunity yet may not qualify as a disabled person under the Program for the purposes of the \$525 elderly or disabled household deduction.

### **Definition of a Person with a Disability under HUD**

1. An individual is a disabled person as defined by their 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 is 55 and is blind, inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

2. An individual is developmentally disabled with a severe chronic disability that is attributable to a mental and/or physical impairment; is manifested before age 22; is likely to continue indefinitely; results in substantial functional limitations in three or more of the following areas: self-care, receptive and expressive language; learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency and reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated.

3. An individual is a disabled person who has a physical, emotional or mental impairment that is expected to be of long-continued or indefinite duration; substantially impedes the person's ability to live independently; is such that the person's ability to live independently could be improved by more suitable housing conditions.

An individual does not meet the HUD definition of disabled if alcoholism or drug addiction would be a contributing factor in determining that the individual is disabled.

The above definition of disability determines whether an applicant or participant is entitled to the \$525 elderly or disabled household deduction. A person who does not meet this definition is not entitled to the deduction.

Before providing the deduction, the PHA must determine that the person meets the definition of a person with a disability.

The PHA will obtain third-party verification 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.

### **Accommodations for Applicants**

All persons who wish to apply for any of the PHA's programs must submit a preliminary written application or apply online through Wait List. Written applications can be accessed on the City of Westminster website at:

<https://www.westminstermd.gov/DocumentCenter/View/25/Section-8-Housing-Application?bidId=>

Online applications can be accessed at: <https://www.waitlistcheck.com/MD1613>

Applications will be made available in an accessible format upon request from a person with a disability.

The full application is to be completed prior to the eligibility appointment in the applicant's own handwriting, unless assistance is needed, or a request for accommodation is made by a person with a disability. Applicants will then be interviewed by PHA staff to review the information on the full application form. Verification of disability as it relates to 504, Fair Housing, or ADA reasonable accommodation will be requested at this time. The full application will also include questions asking all applicants whether reasonable accommodations are needed.

### **Translation of Documents**

The PHA will comply with HUD's Limited English Proficiency (LEP) requirements by identifying LEP persons who need language assistance. The PHA will provide translated notices or make provisions for translation services, if feasible.

In determining whether it is feasible to provide translation of documents written in English into other languages, the PHA will consider the following factors:

- Number of applicants and participants in the jurisdiction who do not speak English and speak the other language.

- Estimated cost to PHA per client of translation of English written documents into the other language.
- The availability of local organizations to provide translation services to non-English speaking families.
- Availability of bilingual staff or assistance from neighboring PHAs to provide translation for non-English speaking families.

### **Approval/Denial of a Requested Accommodation**

The PHA will approve a request for an accommodation if the following three conditions are met:

1. The request was made by or on behalf of a person with a disability.
2. There is a disability-related need for the accommodation.
3. The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on the PHA, or fundamentally alter the nature of the PHA's 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 overall size of the PHA's program with respect to the number of employees, type of facilities, size of budget, and type of operation, including composition and structure of workforce, the nature and cost of the requested accommodation, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

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

After a request for an accommodation is presented, the PHA will respond, in writing, within 10 business days. If the PHA denies a request for an accommodation because it is not reasonable (it would impose an undue financial and administrative burden or fundamentally alter the nature of the PHA's operations), the PHA 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.

If the PHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, the PHA will notify the

family, in writing, of its determination within 10 business days from the date of the most recent discussion or communication with the family.

### **Program Accessibility for Persons with Hearing or Vision Impairments**

HUD regulations require PHAs to ensure that persons with disabilities related to hearing and vision have reasonable access to the PHA's programs and services. At the initial point of contact with each applicant, the PHA shall inform all applicants of alternative forms of communication that can be used other than plain language paperwork.

To meet the needs of persons with hearing impairments, the PHA can provide TTD/TTY (text telephone display/teletype) communication.

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

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

### **Physical Accessibility**

The PHA will comply with regulations pertaining to physical accessibility, including:

- Notice PIH 2010-26
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

### **Denial or Termination of Assistance**

A PHA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation. When applicants with disabilities are denied assistance, the notice of denial must inform them of the PHA's informal review process and their right to request an informal review. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal review process.

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

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

## **CHAPTER 3 ELIGIBILITY FOR ADMISSION**

### **INTRODUCTION**

The PHA is responsible for ensuring that every individual and family admitted to the HCV Program meets all eligibility requirements, including individuals approved to join the family after the family has been admitted to the program. The family must provide any information requested by the PHA to confirm eligibility and determine the level of the family's housing assistance. To be eligible for the HCV Program, the applicant family must:

- Qualify as a family as defined by HUD and the PHA;
- Have income at or below HUD-specified income limits;
- Qualify on the basis of citizenship or eligible immigrant status;
- Provide Social Security Number information for household members; and
- Give written consent for the PHA's collection and use of family information to determine eligibility and level of assistance.

PHAs are also required to determine that the current or past behavior of household members does not include activities that are prohibited by HUD. Eligibility issues covered in this chapter include:

- Definitions of family and household members
- Eligibility criteria
- Factors related to denial of assistance

### **DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS**

Eligibility criteria and program rules vary depending upon the composition of the family requesting assistance. Some requirements apply to the family as a whole and others apply to individual people who will live in the assisted unit. It is important to correctly identify family and household members and to apply HUD's eligibility rules.

Household is a broader term than family in the HCV Program and refers to additional people who, with the PHA's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

### **FAMILY COMPOSITION**

The applicant must qualify as a family. A family may be a single person or a group of persons, and includes the following:

- A single person, who may be an elderly person (62 or older), near-elderly (50-61), displaced person, disabled person, or any other single person;

- A group of persons residing together. Such groups include, but are 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. An elderly family is one in which the head, spouse, co-head, or sole member is an elderly person. Identifying elderly families is important because elderly families qualify for the elderly family allowance;
- A near elderly family;
- A disabled family, which means a family whose head, co-head, spouse, or sole member, is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.
- A person with disabilities. A person with disabilities means a person who:
  - (1) Has a disability as defined in 42 U.S.C. § 423(d)(1);
  - (2) Has a physical, mental or emotional impairment that is expected to be of long-be improved by more suitable housing conditions; or independently, and is of such a nature that ability to live independently could be improved by more suitable housing conditions; or
  - (3) Has a developmental disability as defined in 42 U.S.C. § 15002(8)
    - The remaining member of a tenant family;
    - One or more elderly or disabled persons living with one or more live-in aides; or
    - Two or more persons who intend to share residence whose incomes and resources are available to meet the family's needs.

A child who is temporarily away from home because of placement in foster care is considered a member of the family. This provision only pertains to the foster child's temporary absence from the home and is not intended to artificially enlarge the space available for other family members.

### **Head of Household**

The head of household is the adult member of the family who is designated by the family as the head for purposes of determining income eligibility and rent. The head of household is responsible for ensuring that the family fulfills all responsibilities under the program, alone or in conjunction with a co-head or spouse, and has the legal capacity to enter into a lease under state/local law. An emancipated minor who qualifies under state law will be recognized as head of household.

## **Spouse of Head of Household**

Spouse is the husband or wife of the head of household. For proper application of the Noncitizens Rule, the definition of spouse refers to the marriage partner who, in order to dissolve the relationship, would have to be divorced. **The State of Maryland does not recognize “common law” marriage. However, a marriage partner includes the partner in a valid "common law" marriage from a state that recognizes “common law” marriages, as defined in that state’s law.** The term spouse does not apply to boyfriends, girlfriends, significant others, or co-heads of household.

## **Co-Head of Household**

**The co-head of household is an individual in the household who is equally responsible for the lease, along with the head of household. A family may have a spouse or co-head of household, but not both. A co-head does not qualify as a dependent.**

## **Dependent**

**A dependent is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student. However, 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 dependent allowance.**

## **Full-Time Student**

**A full-time student 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 full-time student is important because each family member that is a full-time student, other than the head, spouse, or co-head, qualifies the family for a dependent allowance. In addition, the earned income of full-time students is treated differently from the income of other family members.**

## **Live-in Aides/Attendants**

**A family may include a live-in aide, provided that the aide:**

- **Is determined by the PHA to be essential to the care and wellbeing of an elderly person, a near-elderly person, or a person with disabilities,**
- **Is not obligated for the support of the person(s), and**
- **Would not be living in the unit except to provide care for the person(s).**

A live-in aide is treated differently than family members; the differences include the following factors:

- Income of the live-in aide is not counted when determining eligibility or level of benefits.
- Live-in aides are not subject to Non-Citizen Rule requirements.
- Live-in aides are not considered as a remaining member of the tenant family.

Relatives are not automatically excluded from being live-in aides, but they must meet all of the requirements in the live-in aide definition described above.

A live-in aide may only reside in the unit with the approval of the PHA. Written verification will be required from a reliable, knowledgeable professional, such as a doctor. This professional must provide written certification that a live-in aide is needed for the care of the family member who is elderly, near-elderly (50-61), or disabled. Verification must include the hours the care will be provided.

The PHA will approve a live-in aide if needed as a reasonable accommodation to make the program accessible to and usable by the family member with a disability. Approval of a live-in aide for reasonable accommodation will be in accordance with CFR 24 Part 8 and the reasonable accommodations section in Chapter 2 of this Administrative Plan.

The PHA has the right to refuse approval or withdraw its approval of a live-in aide if that individual:

- Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;
- Has been convicted of drug-related criminal activity or violent criminal activity; or
- Currently owes rent or other amounts to the City of Westminster Housing Authority or to another PHA in connection with the Housing Choice Voucher Program or public housing assistance under the 1937 Housing Act.

### **Split Households Prior to Voucher Issuance**

When a family on the waiting list splits into two, separate eligible families due to divorce or legal separation, the PHA will determine the placement of the two families on the waiting list since both families cannot share the same original position on the waiting list. The PHA will make the decision based on the following factors:

- Which family unit retains the children or any disabled or elderly members
- Restrictions that were in place at the time the family applied
- Role of domestic violence in the separation of the family
- Recommendations of social service agencies or qualified professionals such as children's protective services

The family is responsible for **providing** any **relevant** documentation regarding these factors. If either or both of the families do not provide the documentation, they may be denied placement on the waiting list for failure to supply information requested by the PHA.

### **Multiple Families in the Same Household**

Two families living together as one family may apply to the HCV Program. For example, a mother, father, and their daughter with her husband and/or children will be considered one family unit.

### **Joint Custody of Children**

Children who are subject to a joint custody agreement but live with one parent at least 51% of the time will be considered members of the household. The requirement of 51% of the calendar year is defined as 183 days (184 days in a leap year), which do not have to run consecutively.

When both parents are on the waiting list and both are trying to claim the child, the parent whose address is listed in the school records will be allowed to claim the school-aged child as a dependent.

Families who claim joint custody or temporary guardianship will be required to complete a self-certification as documentation.

### **INCOME LIMITATIONS**

To be eligible for assistance an applicant must have an Annual Income at the time of admission that does not exceed the very low-income limits for occupancy established by HUD.

#### **Definitions of HUD's Income Limits**

- **Low-income family**—A family whose annual income does not exceed 80 percent of the median income for the area, adjusted for family size.
- **Very low-income family**—A family whose annual income does not exceed 50 percent of the median income for the area, adjusted for family size.
- **Extremely low-income family**—A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

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

## **Income Limits for Targeting**

At least 75 percent of the families admitted to the City of Westminster Housing Authority's Housing Choice Voucher Program during its fiscal year must be extremely low-income families. Annual income of such families will be verified during eligibility determination. HUD may approve exceptions to this requirement if the PHA demonstrates that it has made all required efforts but has been unable to attract an adequate number of qualified extremely low-income families. If the family selected from the waiting list exceeds that income limit after failing to report the change of income while they were on the waiting list, they will be returned to the waiting list, if requested.

## **Portability**

For initial lease-up at admission families who exercise portability must be within the applicable income limit for the jurisdiction of the receiving PHA in which they want to live. Eligible families who do not have proof of legal residence in the Westminster Corporate City limits at the time of initial application, will not be approved to exercise portability upon initial issuance of voucher.

## **MANDATORY SOCIAL SECURITY NUMBERS**

Families are required to provide verification of Social Security Numbers for all family members prior to admission. This requirement also applies to persons joining the family after admission to the program. Failure to furnish verification of every Social Security Number is grounds for denial or termination of assistance.

People who have not been issued a Social Security Number must sign a certification that they have never been issued a Social Security Number.

**People who disclose their Social Security Number but cannot provide verification must sign a certification and provide verification within 60 days; elderly persons must provide verification within 120 days.**

## **CITIZENSHIP/ELIGIBLE IMMIGRATION STATUS**

To receive assistance, a family member must be a U.S. citizen, national, or eligible noncitizen. Individuals who are neither may elect not to contend their status. Eligible noncitizens are persons who are in one of the immigrant categories as specified by HUD. For the citizenship/eligible immigration requirement, the status of each member of the family is considered individually before the family's status is defined.

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

## **Declaration**

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

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

In general, citizens and nationals are required to submit only a signed declaration as verification of their status. However, HUD regulations permit PHAs to request additional documentation of their status such as a passport. The PHA might require additional verification if information is received indicating that an individual's declaration may not be accurate.

## **Eligible Noncitizens**

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with PHA efforts to verify his/her immigration status. 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.

## **Ineligible Noncitizens**

Noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The PHA 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 U.S. Citizenship and Immigration Services (USCIS).

Providing housing assistance to noncitizen students is prohibited. 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 applicant families will be given notice that their assistance will be prorated and that they may request a hearing if they contest this determination.

## **Ineligible Families**

Applicant families that include no eligible members are ineligible for assistance. Families who are determined to be ineligible will be notified in writing of the reason for denial and given an opportunity to request an informal review, or an informal hearing if they were denied due to noncitizen status. See "Complaints and Appeals" chapter for additional information about reviews and hearings.

## **Non-citizen students**

Noncitizen students, even those with eligible immigration status for purposes of HUD's financial assistance, are not eligible to receive housing assistance.

A noncitizen student is a bona fide student who:

- Is pursuing a course of study in this country;
- Has a residence in another country outside of the United States that the person has no intention of abandoning; and
- Is admitted to this country temporarily, solely for the purpose of studying.

When a noncitizen student is accompanied by a noncitizen spouse and/or noncitizen minor children, those family members are also ineligible for assistance. If the noncitizen student and noncitizen spouse have citizen children, the whole family is still ineligible for assistance. However, if a non-citizen student has a citizen spouse, the citizen spouse and children if any, would be eligible for assistance. In that case, assistance would be prorated to ensure that assistance goes only to those family members with eligible immigration status.

## **OTHER CRITERIA FOR ADMISSIONS AND REASONS FOR DENIAL**

A family will not be admitted to the program if any member of the family has been evicted from federally assisted housing for serious violation of the lease within the past five years. In addition to the HUD eligibility criteria, the City of Westminster Housing Authority applies the following criteria as grounds for denial of admission to the program:

If any member of the family has violated any Family Obligations that caused the termination of their assistance during a previous participation in the Section 8 Program or any other federal program within the past five years prior to final eligibility determination.

If a PHA has ever terminated assistance under the program for any member of the family within the past five years prior to final eligibility determination. The City of Westminster Housing Authority may make an exception if the family member who violated a Family Obligation is not a current member of the household.

The family must not owe an outstanding debt to any PHA as a result of prior participation in any federal housing program.

If any applicant deliberately misrepresents the information on which eligibility or tenant rent is established, the PHA may deny assistance and may refer the family file/record to the proper authorities for appropriate disposition.

## **SCREENING FOR ELIGIBILITY**

The PHA will take into consideration any of the criteria for admission described in the "Denial or Termination of Assistance" chapter.

The PHA will use the Maryland Judiciary Case Search as a tool to screen all adult family members 18 years old and older for violent criminal and drug-related activity within the past five years at time of the eligibility briefing.

PHAs are required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have lived. The PHA will screen all adult family members 18 years old and older for registration under the National Sex Offenders Registry.

If the PHA proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, the PHA 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. Assistance could be denied if it is determined that a household member has engaged in 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.

## SCREENING FOR SUITABILITY AS A TENANT

The PHA will not screen family behavior or suitability for tenancy. The PHA has no liability or responsibility to the owner or other persons for the family's behavior or the family's conduct in tenancy.

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, PHA will inform the owner that screening and selection for tenancy is the responsibility of the owner.

The owner should consider the following screening factors:

- Payment of rent and utility bills
- Caring for a unit and premises
- Respecting the rights of other residents to the peaceful enjoyment of their housing
- Drug-related criminal activity or other criminal activity that is a threat to the health,
- safety, or property of others; and
- Compliance with other essential conditions of tenancy.

The PHA will give the owner:

- The family's current and prior address as shown in the PHA's records; and
- The name and address (if known by the PHA) of the landlord at the family's current and prior address.

The PHA will provide the owner the following other information, orally and based upon documentation in the PHA's possession concerning the family, only if the owner provides a written release signed by the family:

- Information about the family's criminal or drug-related activity;
- Information about the family's eviction history;
- Information about any damage to rental units caused by the family, or
- Information about drug-trafficking by family members.

The PHA will not disclose to the owner any confidential information provided to the PHA by the family in response to a PHA 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.

The same types of information will be supplied to all owners who inquire with the PHA. The PHA will advise families how to file a complaint if they have been discriminated against by an owner. The PHA will advise the family to make a Fair Housing complaint. The PHA may also report the owner to HUD (Fair Housing/Equal Opportunity).

## **CHANGES IN ELIGIBILITY PRIOR TO EFFECTIVE DATE OF THE CONTRACT**

Changes that occur during the period between issuance of a voucher and lease-up may affect the family's eligibility or share of the rental payment.

## **PROHIBITED ADMISSIONS CRITERIA**

Admission to the program will not be based on:

- The family's residence prior to admission. However, the PHA has adopted a residency preference.
- Where the family will live with assistance under the program.
- Discrimination because of age, race, color, religion, sex, or national origin.
- Discrimination because of disability.
- Discrimination because members of the family are unwed parents, recipients of public assistance, or children born out of wedlock.
- Discrimination because a family includes children.
- Whether a family decides to participate in a family self-sufficiency program; or
- Other reasons as listed in Chapter 2, Fair Housing and Equal Opportunity

## CHAPTER 4 APPLICATIONS, WAITING LIST, AND TENANT SELECTION

### INTRODUCTION

When a family applies for assistance under the HCV Program, the PHA must request the information needed to determine the family's eligibility. Families that apply for assistance are placed on a waiting list. When HCV assistance becomes available, the City of Westminster Housing Authority must select families from the waiting list in accordance with HUD regulations and PHA policies described in this Administrative Plan.

The PHA has policies and procedures for accepting applications, placing families on the waiting list and selecting families from the waiting list. The order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or the PHA. Examples of this are the selection of families for income targeting and the selection of families that qualify for targeted funding.

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance, and that the PHA affirmatively further fair housing goals in the administration of the program. Adherence to the selection policies described in this chapter ensures that the PHA will be in compliance with all relevant fair housing requirements.

This chapter describes HUD and PHA 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:

- **The Application Process**—this section provides an overview of the application process and discusses obtaining and submitting applications. It also explains how the PHA processes applications.
- **Managing the Waiting List**—this section details the policies that govern how the 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 PHA follows to keep the waiting list current.
- **Selection for HCV Assistance**—this section describes policies that guide the PHA in selecting families for HCV assistance when funding becomes available. It also specifies how in-person interviews will ensure that the PHA has sufficient information to make a final eligibility determination.

## **THE APPLICATION PROCESS**

This section describes the policies for making applications available, accepting applications, making preliminary determinations of eligibility, and the placement of applicants on the waiting list. This section also describes the PHA's obligation to ensure the accessibility of the application process to elderly persons, people with disabilities, and people with Limited English Proficiency (LEP).

Families who wish to apply for the HCV Program must complete and submit a written application form or apply online through WaitList Check. HUD permits the PHA to determine the format and content of the HCV application, as well as how applications are made available, and how applications will be accepted. The PHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the PHA's application. Applications will be made available in an accessible format upon request from a person with a disability.

Paper applications are available at the City of Westminster's Housing office; through a link on the City of Westminster's website (<https://www.westminstermd.gov/137/Housing-Services>); or can be mailed, faxed, or emailed upon request. Online applications can be completed using any device with internet access at the following website: <https://www.waitlistcheck.com/MD1613>. This initial application is sometimes referred to as a preapplication.

Completed applications can be returned to the PHA by mail, email, 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, the PHA will notify the family of the additional information needed.

The PHA will use a two-step process when accepting applications. Under the two-step application process, the PHA initially requires families to provide only the information needed to make an initial assessment of the family's eligibility, and to determine the family's preference qualification based on claimed preference.

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

### **Accessibility of the Application Process**

The PHA will take steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard PHA application process. This could include people with disabilities, certain elderly individuals, as well as persons with limited English proficiency (LEP). The PHA 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 PHA will provide an alternate approach that provides full access to the application process. Chapter 2 provides a full discussion of the PHA's policies related to providing reasonable accommodations for people with disabilities.

## **MANAGING THE WAITING LIST**

The PHA must have policies regarding organizing and managing the waiting list of applicant families, including:

- Opening the list to new applicants
- Closing the list to new applicants
- Notifying the public of waiting list openings and closings
- Updating the waiting list
- Purging the list of families that are no longer interested in or eligible for assistance
- Conducting outreach to ensure a sufficient number of applicants

### **Closing the Waiting List**

The PHA will close the waiting list when the estimated waiting period for housing assistance for applicants on the list reaches 24 months for the most current applicants. Where the PHA has particular preferences or funding criteria that require a specific category of family, the PHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

The waiting list may not be closed if it would have a discriminatory effect inconsistent with applicable civil rights laws. The PHA will announce the closing of the waiting list by public notice, including the local newspaper, City of Westminster website, service providers, and community-based organizations. The PHA will give at least seven calendar days' notice prior to closing the list.

### **Reopening the Waiting List**

If the waiting list has been closed, it cannot be reopened until the PHA 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.

The PHA will announce the reopening of the waiting list at least fourteen calendar 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 PHA will give public notice by publishing the relevant information in suitable media outlets including but not limited to the local newspaper(s) of general circulation, including the Carroll County Times, the PHA's website, any available minority media, or other means that the PHA finds suitable.

### **Applicant Status While on the Waiting List**

Applicants are required to inform the PHA of changes in address. Applicants are also required to respond to requests from the PHA to update information on their application and to determine their continued interest in assistance. All changes and responses to requests to update information must be within 14 calendar days of the change or request.

If after a review of the application the family is determined to be preliminarily eligible, they will be notified in writing or in an accessible format upon request, as a reasonable accommodation. The notice will contain the approximate date that assistance may be offered and will further explain that the estimated date is subject to factors such as turnover and available funding. This notification is considered to be a receipt of their application and should be retained for future reference.

If the family is determined to be ineligible based on the information provided in the application, the PHA will notify the family in writing (in an accessible format upon request as a reasonable accommodation), state the reason(s), and inform them of their right to an informal review. People with disabilities may request to have an advocate attend the informal review as an accommodation. See "Complaints and Appeals" chapter.

The waiting list will be updated periodically. Phone inquiries as to the position on the list will only be accepted on the third Wednesday and Thursday of each month.

### **Purging the Waiting List**

The waiting list will be updated annually to ensure that all applicants and applicant information is current. To update the waiting list, PHA will send an update request via First Class mail to each family on the waiting list to determine if the family is still interested in and qualifies for the HCV Program. This update request will be sent to the last address on record that the PHA has for the family. The update request will provide a deadline of 30 days 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. An extension of 30 additional days to respond will be granted, if requested prior to the expiration of the initial 30-day time period and needed as a reasonable accommodation for a person with a disability.

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, and the envelope and letter will be maintained in the file.

If the notice is returned by the post office with a forwarding address, the notice will be mailed to the address indicated. The family will have 10 calendar days to respond from the date the letter was mailed a second time.

If an applicant is removed from the waiting list for failure to respond, they will not be entitled to reinstatement unless the Director determines there were circumstances beyond the person's control.

## **SELECTION FOR HCV ASSISTANCE**

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 are selected from the waiting list depends on the selection method chosen by the PHA and is impacted in part by any selection preferences for which the family qualifies. The availability of targeted funding also may affect the order in which families are selected from the waiting list.

The PHA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to the PHA's selection policies.

Based on the PHA's turnover and the availability of funding, groups of families will be selected from the waiting list to form a final eligibility "call in." Selection from the pool will be based on an eligibility meeting and completion of verification.

### **Special Admissions**

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). In these cases, the PHA may admit such families whether or not they are on the waiting list, and, if they are on the waiting list, without considering the family's position on the waiting list. These families are considered non-waiting list selections. The PHA must maintain records showing that such families were admitted with special program funding.

## Income Targeting

In accordance with the Quality Housing and Work Responsibility Act of 1998, the PHA applies its **Housing Choice Voucher Program** new admissions to families whose income does not exceed 30 percent of the area median income. HUD refers to these families as “extremely low-income families.”

## Targeted Funding

HUD may award a PHA funding for a specified category of families on the waiting list. The PHA must use this funding only to assist the families within the specified category. In order to assist families within a targeted funding category, the PHA may skip families that do not qualify within the targeted funding category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in the Selection Method.

## Local Preferences

PHAs are permitted to establish local preferences, and to give priority to serving families that meet those preferences/criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits PHAs to establish other local preferences at its discretion. The PHA’s preferences are based on local housing needs and priorities that can be documented by generally accepted data sources. HUD Notice PIH 98-64 eliminated the requirement for public notice and a period for public comment when changing the PHA’s preference system.

The PHA uses the following local preference system:

- People who are working at least 20 hours per week within the City of Westminster corporate boundaries and is verified, and meet income requirements per HUD definition;
- People who are living within the City of Westminster corporate boundaries and meet income requirements per HUD definition;
- People who are elderly (age 62 or older) or have a disability and living within the City of Westminster corporate boundaries;
- People who are living in a sponsored homeless shelter in the City of Westminster and are receiving case management from the shelter programs sponsored by Human Services Programs of Carroll County;
- Victims of domestic violence, dating violence, sexual assault, or stalking;

The applicant must certify that the abuser will not reside with the applicant unless the PHA gives prior written approval.

### **Treatment of Single Applicants**

Applicants who are elderly or disabled, or displaced families of no more than two persons will be given a selection priority over all "Other Single" applicants regardless of preference status. "Other Singles" denotes a one-person household in which the individual member is not elderly, disabled, or displaced by government action. Such applicants will be placed on the waiting list in accordance with any other preferences to which they are entitled, but they cannot be selected for assistance before any one- or two-person elderly, disabled, or displaced family regardless of local preferences.

### **Initial Determination of Local Preference Qualification**

If an applicant certifies that he or she qualifies for a preference, the qualification will be accepted without verification at the initial application. When the applicant is selected from the waiting list for the final determination of eligibility, the preference will be verified. If the preference verification indicates that an applicant does not qualify for the preference, the applicant will be returned to the waiting list without the local preference and given an opportunity to request an informal review.

### **Targeted Funding**

Families will be selected from the waiting list based on the selection preference(s) for which they qualify, and in accordance with the PHA's hierarchy of preferences, if applicable. Within each preference category, families will be selected according to the date and time their complete application was received. The PHA's selection process leaves a clear audit trail that can be followed to verify selection was in accordance with this Administrative Plan.

### **Change in Circumstances**

Changes in an applicant's circumstances while on the waiting list may affect the family's entitlement to a preference. Applicants are required to notify the PHA in writing when their circumstances change. For example, if the family's annual income, as verified at final eligibility determination, does not fall under the Extremely Low Income (ELI) limit and the family was selected for income targeting purposes before families with a higher preference, the family will be returned to the waiting list.

## Preference Denial

If the PHA denies a preference, the PHA will notify the applicant in writing of the reasons why the preference was denied and offer the applicant an opportunity for a review by the Director. If the preference denial is upheld as a result of the review, or the applicant does not request a review, the applicant will be placed on the waiting list without benefit of the preference. Applicants may exercise other rights if they believe they have been discriminated against. If an applicant falsifies documents or makes false statements in order to qualify for any preference, he or she will be removed from the waiting list.

## Notification of Selection

The PHA will notify a 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 application/eligibility interview, including procedures for rescheduling, if necessary.
- Who is required to attend the interview.
- The full application/affidavit that is to be completed by the head of household in his or her own handwriting, unless assistance is needed, or a request for accommodation is made by a person with a disability. This full application is to be returned to the PHA **within 10 working days**, prior to the interview.
- Documents that must be provided at the interview, including information about what constitutes acceptable documentation.

A notice of denial will be sent to the family's address of record. If a notification letter is returned to the PHA with no forwarding address, the family will be removed from the waiting list.

## Completion of Full Application and Eligibility Interview

The PHA conducts an in person interview to make an eligibility determination. Being invited to an interview does not guarantee admission to the program. Assistance cannot be provided until all Social Security Number documentation requirements are met. However, if the PHA determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by the PHA. Reasonable accommodation must be made for people with disabilities who are unable to attend an interview due to their disability.

All adult family members will be required to attend the interview. Exceptions may be made for full-time students or for members for whom attendance would be a hardship. Verification of information pertaining to adults not present at the interview will not begin until signed release forms are returned to the PHA.

If an applicant fails to appear for an eligibility interview, the PHA will schedule a second appointment. If the applicant misses the second appointment without prior approval, the application will be denied. The applicant will be notified in writing about the denial and be offered an opportunity to request an informal review.

Reasonable accommodation will be made for people with a disability who require an advocate. A designee will be allowed to participate in the interview process, but only with permission and request of the person with a disability. An advocate, interpreter, or other assistant may assist the family with the application and interview process.

All adult members must sign HUD Form 9886, Release of Information, the affidavit/application, and all supplemental forms required by the PHA. The declarations and consents related to citizenship/immigration status must also be signed. If required documents are not provided at the time of the eligibility interview, the head of household will have **10 working days** to submit completed paperwork. Failure to complete and/or sign required documents will be cause for denial of the application. Every adult household member must sign a consent form to release criminal conviction records and to allow PHAs to receive records and use them in accordance with HUD regulations.

If the PHA determines at or after the interview that additional information or document(s) are needed, the PHA will request the additional information be provided **within 10 working days**. If the information is not supplied in this time period, the PHA may notify the family that assistance is denied.

### **Final Determination and Notification of Eligibility**

The PHA will make a final determination of eligibility after the verification process described is completed. Family composition, income, allowances and deductions, assets, full-time student status, and other criteria will be verified. Eligibility decisions are based upon HUD regulations, information provided by the family, verification procedures completed by the PHA, and current eligibility criteria. Verifications may not be more than 60 days old when the voucher is issued.

Following this, if the family is determined to be eligible, the PHA will mail a notification of eligibility. The family will then be scheduled to attend a briefing to receive its voucher and participate in an orientation to the HCV Program.

## **CHAPTER 5 BRIEFINGS AND FAMILY OBLIGATIONS**

### **INTRODUCTION**

This chapter explains the briefing and voucher issuance process. When a family is determined to be eligible for the HCV Program, the PHA 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 a mandatory oral briefing and provision of a briefing packet containing HUD-required documents and other information the family needs to know in order to lease a unit under the program. The information presented in the briefing regarding the program will enable families to achieve maximum benefit while complying with program requirements. The briefing will provide a broad description of owner and family responsibilities, PHA procedures, and how to lease a unit. Information in the briefing packet includes the benefits of moving outside areas of poverty and minority concentration.

Once the family is fully informed of the program's requirements, the PHA issues the family a voucher. The voucher includes the unit size for which the family qualifies based on the PHA's subsidy standards, as well as the issue and expiration date of the voucher. The voucher is the document that authorizes 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 PHA policies related to the following two topics:

**Briefings and Family Obligations**—This part details the program's requirements for briefing families orally, and for providing written materials describing the program, its requirements, and the Family Obligations.

**Subsidy Standards and Voucher Issuance**—This part discusses the PHA'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 covers the policies that dictate how vouchers are issued, and how long families have to locate a unit.

### **BRIEFINGS**

PHAs are required to give an oral briefing and provide a briefing packet with written information about the program to families who are determined to be eligible for assistance. Families will usually be briefed in groups, but an individual briefing may occasionally be held, if necessary. At the briefing, the PHA must ensure effective communication in accordance with Section 504 of the Rehabilitation Act of 1973. (Refer to Chapter 2 for a complete discussion of accessibility requirements.) Oral briefings may be conducted telephonically or via a virtual meeting platform.

## **Notification and Attendance**

When the family is notified of their eligibility to receive assistance, the notice will include the date and time for a scheduled briefing, as well as who is required to attend. Generally, the head of household is required to attend the briefing. If the head of household is unable to attend, the PHA may approve another adult family member or other authorized or verified representative to attend the briefing. If the notice is returned by the post office, the applicant will be denied, and their name will not be placed back on the waiting list.

The PHA will not issue a voucher to a family unless the household representative has attended a briefing and signed the voucher. Applicants who provide prior notice of inability to attend a briefing will automatically be scheduled for the next briefing. Applicants who fail to attend two scheduled briefings, without prior notification and approval of the PHA, may be denied admission.

Briefings will be conducted in English. A special briefing will be scheduled at the request of a family with limited English proficiency. The PHA will supply an interpreter or interpreting device as necessary. If the family includes a person with disabilities, the PHA will ensure compliance with CFR 8.6 to ensure effective communication.

## **Oral Briefing Subjects**

Each briefing will provide information on the following subjects:

- How the HCV Program works.
- Owner and tenant responsibilities.
- Where the family can lease a unit, including renting a unit inside or outside the PHA's jurisdiction after one year in the City of Westminster Housing Authority's jurisdiction.
- The term of the voucher and the PHA policy for requesting extensions or suspensions of the voucher.
- A description of the method used to calculate the housing assistance payment for a family, including how a payment standard is determined, how a total tenant payment is determined, information on payment standards and the utility allowance schedule, and how the PHA determines the maximum allowable rent for an assisted unit, including the rent reasonableness standard.

- An explanation of how portability works. The PHA may not discourage the family from choosing to live anywhere in the PHA jurisdiction or outside the PHA jurisdiction under portability rules, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order.
- The PHA must inform the family of how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process that may affect the family's assistance.
- The advantages of living in areas that do not have a high concentration of low income families.
- The PHA policy on providing information about families to prospective owners.

### **Briefing Packet**

The documents and information provided in the briefing packet comply with all HUD requirements. The PHA also includes other information and/or materials that are not required by HUD. Briefing packets contain the following:

- A copy of the voucher briefing slide presentation, which covers all of the information HUD requires, as well as additional information specific to the City of Westminster Housing Authority's Housing Choice Voucher Program.
- A description of the method used to calculate the housing assistance payment for a family, including how the PHA determines the payment standard for a family, how the PHA determines total tenant payment for a family, information on the payment standard and utility allowance schedule, and how the PHA determines the maximum allowable rent for an assisted unit.
- Information about where the family may lease a unit.
- Portability procedures
- The HUD-required tenancy addendum, which must be included in the lease.
- The Request for Tenancy Approval (RTA) form that the landlord must complete and return to the PHA.
- A statement of the PHA policy on providing information about families to prospective owners.

- The PHA subsidy standards, including when and how exceptions are made and how the voucher size relates to the unit size selected.
- Information on how to select a unit that complies with the **National Standards for the Physical Inspection of Real Estate (NSPIRE)**.
- The HUD pamphlet on lead-based paint entitled, Protect Your Family from Lead in Your Home and information about where blood level testing is available.
- Information on federal, state, and local equal opportunity laws and HUD's pamphlets, Are You a Victim of Housing Discrimination? and Fair Housing Equal Opportunity For All. Included in the pamphlets are the housing discrimination complaint form and contact information for HUD enforcement offices.
- A list of landlords known to the PHA who may be willing to lease a unit to the family or other resources known to the PHA (e.g., online search tools, organizations, newspaper) that may assist the family in locating a unit.
- The Family Obligations that are on the HUD voucher and that were acknowledged and signed at eligibility interviews.
- Information about the protections afforded by the Violence Against Women Act of 2013 (VAWA) and Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022) to victims of domestic violence, dating violence, sexual assault, and stalking.
- The grounds on which the PHA may terminate assistance for a participant family because of family actions or inactions.

## **FAMILY OBLIGATIONS**

Obligations of the family are described in the HCV regulations and on the voucher itself. These obligations include responsibilities the family is required to fulfill, as well as prohibited actions. The PHA must inform families of these obligations during the oral briefing and review that these responsibilities are listed on the printout of the presentation. 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 of these obligations may result in termination of housing assistance.

## Timely Reporting of Changes Required by Family Obligations

When the Family Obligations require the family to respond to a request or notify the PHA of a change, the City of Westminster Housing Authority considers **10 working days** prompt notice. All notifications of changes must be in writing.

### Family Obligations

The family obligations of the voucher are listed as follows:

The family **must** supply any information that the PHA or HUD determines to be necessary, including required evidence of citizenship or eligible immigration status, and information needed for annual reexaminations and interim reexaminations regarding family income and family composition.

The family **must** disclose and verify social security numbers and sign and submit consent forms for obtaining information.

The family **must** promptly notify the PHA, in writing, of any changes in income, assets, and/or household composition.

The family **must** disclose and verify Social Security Numbers and sign and submit consent forms for obtaining information.

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

The family **must** promptly notify the PHA in writing when the family is away from the unit for an extended period of time.

The family **must** allow the PHA to inspect the unit at reasonable times and after reasonable notice. If a tenant fails to attend two appointments with the housing inspector, housing assistance may be terminated.

When it is time for an annual reexamination, all people in the household age 18 or older **must** attend. If two appointments are missed, housing assistance may be terminated.

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

The family **must** use the assisted unit for residence by the family. The unit **must** be the family's only residence.

The family **must** submit a written request for PHA approval to add a family member as an occupant of the unit prior to allowing them to move in. Written approval by the landlord must also be submitted to the PHA to add a family member. The PHA will determine eligibility of the new member in accordance with the policies in [Chapter 3](#).

The family **must** promptly notify the PHA in writing if any family member no longer lives in the unit.

The family **must not** own or have any interest in the unit.

The family **must not** commit any serious or repeated violation of the lease. The PHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, 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 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.

The family **must not** commit fraud, bribery, or any other corrupt or criminal act in connection with the program.

The family **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.

The family **must not** sublease or let the unit or assign the lease or transfer the unit (subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member).

The family **must not** receive HCV Program housing assistance while receiving another housing subsidy for the same unit or a different unit under any other federal, state, or local housing assistance program.

The family **must not** damage the unit or premises (other than damage from ordinary wear and tear) or permit any guest to damage the unit or premises, including damages resulting from nonpayment of utilities.

The 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 PHA 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).

The family **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.

## CHAPTER 6 SUBSIDY STANDARDS AND VOUCHER ISSUANCE

### INTRODUCTION

HUD requires PHAs to establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions, and that such standards provide for a minimum commitment of subsidy while avoiding overcrowding. The standards used for the unit size selected by the family must be within the minimum unit size requirements **set forth in this chapter**. This chapter describes the subsidy standards that will be used to determine the voucher size (family unit size) when families are selected from the waiting list, as well as the PHA's procedures when a family's size changes, or a family selects a unit size that is different from the voucher.

### DETERMINING VOUCHER SIZE/FAMILY UNIT SIZE

The PHA does not determine who shares a bedroom/sleeping room, but there must be at least one person per bedroom on the voucher. The PHA's subsidy standards for determining voucher size will be applied in a manner consistent with Fair Housing guidelines.

For each family, the PHA determines the appropriate number of bedrooms under the PHA 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 subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.

The PHA assigns one bedroom for each two people in the household within the following guidelines:

- Heads of household will not be required to share a bedroom with a child.
- Heads of household with a spouse or in a spousal relationship will be allocated one bedroom.
- Cohabitants will be allocated one bedroom.
- Two children under age six regardless of gender will be allocated one bedroom.

- Children of the same gender, who are more than six years apart in age, will each be allocated one room.
- Children and adults of the same gender will be allocated one bedroom if they are less than 6 years apart in age.
- Foster children will be included in determining unit size only if they will be in the unit for more than six months.
- Live-in Aides will generally be provided with a separate bedroom. No additional bedrooms are provided for the Live-in Aide's family.
- 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.
- A family that consists of a pregnant woman with no other persons will be treated as a two-person family.

#### **GUIDELINES FOR DETERMINING VOUCHER SIZE**

| <b>Voucher Size</b> | <b>Minimum Number<br/>Persons in<br/>Household</b> | <b>Maximum Number<br/>Persons in<br/>Household</b> |
|---------------------|--|--|
| <b>0 Bedroom</b>    | <b>1</b>   | <b>1</b>   |
| <b>1 Bedroom</b>    | <b>1</b>   | <b>4</b>   |
| <b>2 Bedrooms</b>   | <b>2</b>   | <b>6</b>   |
| <b>3 Bedrooms</b>   | <b>3</b>   | <b>8</b>   |
| <b>4 Bedrooms</b>   | <b>4</b>   | <b>10</b>  |
| <b>5 Bedrooms</b>   | <b>6</b>   | <b>12</b>  |
| <b>6 Bedrooms</b>   | <b>8</b>   | <b>14</b>  |

## Exceptions to Subsidy Standards

In determining family unit size for a particular family, the PHA may grant an exception to its established subsidy standards if the PHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances.

Reasons may include, but are not limited to:

- A need for an additional bedroom for medical equipment
- A need for a separate bedroom for reasons related to a family member's disability, medical or health condition

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.

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 such request must be made in writing within 14 days of the PHA's determination of bedroom size.

Requests based on health-related reasons must be verified by a knowledgeable professional source (e.g., doctor or health professional), 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 PHA will notify the family of its determination **within 20 business** days of receiving the family's request. If a participant family's request is denied, the notice will inform the family of their right to request an informal hearing.

## PHA Error

If the PHA errs in the bedroom size designation, the family will be issued a voucher of the appropriate size prior to going under lease. If the change in the voucher size benefits the family, the family will be issued a voucher immediately in the correct size. Otherwise, the voucher will be issued at the next annual recertification.

## Changes for Applicants

The voucher size is determined prior to the briefing by comparing the family composition to the PHA's subsidy standards. If an applicant requires a change in the voucher size, based on the requirements of the PHA subsidy standards, the above-referenced guidelines **for determining voucher size** will apply.

## Changes for Participants

The members of the family residing in the unit must be approved by the PHA. The family must obtain approval of any additional family member before the new member occupies the unit except for additions by birth, adoption, or court-awarded custody, in which case the family must inform the PHA within 10 days. The above referenced guidelines for voucher size will apply. Additions to the family may be allowed to reside with the participant but the voucher size will not be increased.

## Under-housed Families

If a unit does not meet property maintenance code space standards due to an increase in family size and the unit is too small, the PHA will issue a new voucher of the appropriate size and assist the family in locating a suitable unit.

The PHA will also notify the family of the circumstances under which an exception will be granted, such as:

- If a family requires the additional bedroom because of a health problem which has been verified by the PHA.
- If a family with a disability is under housed in an accessible unit.
- The PHA and family have been unable to locate a unit within 60 days.

## Unit Size Selected

The family may select a different size unit than that listed on the voucher. There are three criteria to consider:

Subsidy Limitation: The family unit size as determined for a family under the PHA subsidy standard for a family assisted in the voucher program is based on the PHA's adopted payment standards. The payment standard for a family shall be the lower of:

- The payment standard amount for the family unit size; or
- The payment standard amount for the unit size rented by the family.

Utility Allowance: The utility allowance used to calculate the gross rent is based on voucher size issued or the unit size selected by the family, whichever is lower.

HUD Occupancy Standards: The standards allow two people per living/sleeping room and permit maximum occupancy levels (assuming a living room is used as a living/sleeping area) as shown in the [Guidelines for Determining Voucher Size](#). The levels may be exceeded if a room in addition to bedrooms and living room is used for sleeping.

## **ISSUANCE OF VOUCHERS**

When a family is selected from the waiting list (or as a Special Admission), or when a participant family wants to move to another unit, the PHA issues a HCV, HUD Form 52646. The voucher is the family's authorization to search for housing. Vouchers specify the unit size for which the family qualifies, the date of voucher issuance, and the date of expiration. It contains a brief description of how the program works as well as the Family Obligations under the program.

The voucher is evidence that the PHA has determined the family to be eligible for the program, and the PHA expects to have money available to subsidize the family if the family finds an approvable unit. However, the PHA 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 PHA's HCV Program. Vouchers are only issued after the PHA has determined that the family is eligible based on verification of information received within the 60 days prior to issuance, and after the family has attended an oral briefing. Admission to the HCV Program occurs when the lease and contract become effective.

### **Term of Voucher**

The initial term of a voucher is 60 days and is stated on the voucher. The family must submit a Request for Tenancy Approval (RFTA) and proposed lease within the 60-day period unless an extension has been granted by the PHA.

### **Extensions of Voucher Term**

A PHA 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. Discretionary policies related to extension and expiration of search time are described in this Administrative Plan.

PHAs 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 this purpose.

A family may request an extension of the voucher time period. All requests for extensions must be received prior to the expiration date of the voucher. Extensions beyond 60 days are permissible at the discretion of the Director of Housing Services primarily for the following reasons:

Extenuating circumstances such as hospitalization or a family emergency for an extended period of time, which have affected the family's ability to find a unit. Verification is required.

The PHA is satisfied that the family has made a reasonable effort to locate a unit, including seeking the assistance of the PHA, throughout the 60-day issuance. A completed search record is required.

The family was prevented from finding a unit due to disability accessibility requirements or large size unit requirement. A written search record is part of the required verification.

Families who require additional assistance during their search may contact the PHA office to request assistance. Upon request, the PHA will assist families with negotiations with owners and provide other assistance related to the families' search for housing. The families are required to keep a search record from the beginning in order that they may have such documentation in case they need an extension.

The initial term of the voucher plus any extensions will never exceed 180 calendar days from the initial date of issuance.

### **Suspensions of Voucher Term**

When a Request for Tenancy Approval is received, the PHA will deduct the number of days required to process the request from the 60-day term of the voucher.

### **Expiration of Voucher Term**

If the voucher has expired and has not been extended by the PHA or expires after an extension, the family will be denied assistance. The family will not be entitled to a review or hearing. If the family is currently assisted and was only seeking to move, they may remain as a participant in their unit if there is an assisted lease/contract in effect. Within 10 working days after the expiration of the voucher term or any extension, the PHA 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.

### **Voucher Issuance Determination for Split Households**

In those instances when a family assisted under the Housing Choice Voucher Program becomes divided into two otherwise eligible families due to divorce, legal separation, or the division of the family, and the new families cannot agree as to which new family unit should continue to receive the assistance, and there is no determination by a court, the Director of Housing Services shall consider the following factors to determine which of the families will continue to be assisted:

- Which of the two new family units has custody of dependent children;
- Which family member was the head of household when the voucher was initially issued (listed on the initial application);
- The composition of the new family units, and which unit contains elderly or disabled members;
- Whether domestic violence was involved in the break-up;
- Which family members remain in the assisted unit; and
- Recommendations of social service professionals.

Documentation of these factors will be the responsibility of the requesting parties. If documentation is not provided, the PHA will terminate assistance on the basis of failure to provide information necessary for a recertification.

### **Remaining Member of Tenant Family—Retention of Voucher**

To be considered the remaining member of the tenant family, the person must have been previously approved by the PHA to be living in the unit. A live-in attendant, by definition, is not a member of the family and will not be considered a remaining member of the family. For a minor child to continue to receive assistance as a remaining family member, one of the following must occur:

The court must award emancipated minor status to the minor; or

The PHA must verify that Social Services or the Juvenile Court has arranged for another adult to be brought into the assisted unit to care for the minor child for an indefinite period.

A reduction in family size may require a reduction in the voucher unit size, which will take effect at the next annual recertification.

## CHAPTER 7 INCOME AND SUBSIDY DETERMINATIONS

### INTRODUCTION

The PHA will use the methods as set forth in this Administrative Plan to verify and determine that family income at admission and at annual reexamination is correct. The accurate calculation of Annual Income and Adjusted Income will ensure that families are not paying more or less money for rent than their obligation under the Regulations.

This Chapter defines the allowable expenses and deductions to be subtracted from Annual Income and how the presence or absence of household members may affect the Total Tenant Payment (TTP). Income and TTP are calculated in accordance with 24 CFR Part 5, Subparts E and F, and further instructions set forth in HUD Notices and Memoranda. The formula for the calculation of TTP is specific and not subject to interpretation. The PHA's policies in this Chapter address those areas which allow the PHA discretion to define terms and to develop standards in order to assure consistent application of the various factors that relate to the determination of TTP.

### ANNUAL INCOME

Annual income includes all amounts, not specifically excluded, received from all sources by each adult family member 18 years or older or the head of household or their spouse, plus unearned income by or on behalf of each dependent under 18 years, plus imputed returns on net family assets exceeding \$50,000 (adjusted annually using the CPI-W) when the value of the actual returns from a given asset cannot be calculated. Imputed returns are based on the current passbook savings rate, as determined by HUD.

In accordance with this definition, all income that is not specifically excluded in the regulations is counted. For purposes of calculating the TTP, HUD defines what is to be calculated and what is to be excluded.

Annual income is defined as the gross amount anticipated to be received by the family during the 12 months after certification or recertification. Gross income is the amount of income prior to any HUD allowable expenses or deductions and does not include income that has been excluded by HUD. Annual income is used to determine whether or not applicants are within the applicable income limits. Adjusted Income is defined as the Annual income minus any HUD allowable expenses and deductions.

It is the responsibility of the head of the household to report changes in family composition, assets, allowances, deductions, and all income into the household. The rules on which sources of income are counted vary somewhat by family member.

## ANNUAL INCOME EXCLUSION

- Any imputed return on an asset when net family assets total \$50,000 (adjusted annually) or less and no actual income from the net family assets can be determined.
- Income that will not be repeated in the coming year based on information provided by the family. Examples include U.S. Census Bureau for employment income (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not resulting in permanent employment; State or federal refundable tax credits or state or federal tax refunds received directly at the time they are received directly by the family; Gifts for significant life events or milestones (e.g., holidays, birthdays, wedding gifts, baby showers, anniversaries); Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization; Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.
- Gross income received through self-employment or operation of a business. Note that net income from the operation of a business or profession and 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.
- All earned income of all children under the age of 18, including foster children.
- Adoption assistance payments for a child in excess of the amount of the dependent deduction.
- Earned income of dependent full-time students in excess of the amount of the dependent deduction.
- Any assistance that Section 479B of the Higher Education Act (HEA) of 1965, as amended, requires to be excluded from a family's income.
- Student financial assistance, not excluded under the HEA, for actual covered costs of higher education.
- Income and distributions from any Coverdell educational savings account or any qualified tuition program under IRS section 530 or any qualified tuition program under section 529.
- Income earned by government contributions to, or distributions from, 'baby bond' accounts created, authorized or funded by federal, state or local government.
- Payments received for the care of foster children or adults, including State kinship, guardianship care payments, or tribal kinship payments.

- Income of a live-in aide, foster child, or foster adult as defined in 24 CFR 5.403 and 5.603.
- Payment made by or authorized by a state Medicaid managed care system or other state agency to a family to enable a family member to live in the family's assisted unit.
- Amounts set aside for use under a Plan to Attain Self-Sufficiency (PASS).
- Amounts for, or in reimbursement of, health and medical care expenses for any family member.
- Any distributions of a trust's principal are excluded. PHAs must count any distributions of income from an irrevocable trust or a trust not under the control of the family (e.g., distributions of earned interest) as income to the family with the expectation of distributions used to pay the health and medical care expenses of a minor.
- Insurance payments and settlements for personal or property loss including, but not limited to: payments through health insurance, motor vehicle insurance, and workers' compensation.
- Income received from any account under an IRS-recognized retirement plan. However, periodic payments are income at the time of receipt.
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
- Payments related to aid and attendance for veterans under 38 U.S.C. 1521.
- Amounts recovered in a civil action or settlement based on malpractice, negligence and other breach of duty claim resulting in a family member becoming disabled.
- Reparation payments paid by a foreign government for claims by people persecuted during the Nazi era.
- Payments received by tribal members from claims relating to the mismanagement of assets held in trust by the United States.
- Civil rights settlements or judgments, including settlements or judgments for back pay.
- Amounts received by a participant in other publicly assisted programs for or in reimbursement of expenses to allow program participation (e.g., special equipment, clothing, transportation, child care, etc.).
- Incremental earnings and benefits from training programs HUD and qualifying employment training programs and training of a family member as resident management staff.

- Income earned on amounts placed in a family's FSS account.
- Replacement housing "gap" payments to offset increased rent and utility costs to families displaced from one federally subsidized housing unit and another.
- Deferred periodic amounts from: SSI, Supplemental Security Income and benefits or VA disability benefits that are received in a lump sum or prospective monthly amounts.
- Refunds or rebates under state or local law for property taxes paid on the dwelling unit.
- The net amount disbursed by a lender to a borrower or a third party (e.g., educational institution or car dealership).

## **DEFINITION OF TEMPORARILY/PERMANENTLY ABSENT**

### **Temporarily Absent**

The income of family members approved to live in the unit will be counted even if they are temporarily absent. The PHA defines temporarily absent as away from the unit for 30 consecutive days. It is the responsibility of the head of household to report changes in family composition, including any absences. If the head of household or spouse is temporarily absent due to military service, all military pay and allowances (except hazardous duty pay as defined by HUD) are counted as income.

### **Permanently Absent**

Any member of the household is considered permanently absent if he or she is away from the unit for 60 consecutive days. The income of people permanently absent will not be counted. Generally, an individual who is permanently absent is no longer considered a family member. Exceptions to this general policy are discussed below. If the entire family is absent from the assisted unit for 60 consecutive days, the entire family is considered permanently absent, and assistance will be terminated.

### **Absence Due to Medical Reasons**

If any family member leaves the household to enter a facility such as a hospital, nursing home, or rehabilitation center, and verification can be made that the family member will be returning in less than 90 days; the family member will not be considered permanently absent. The PHA will obtain verification from a doctor or other medical professional as to the likelihood and timing of the family member's return.

### **Absence Due to Full-time Student Status**

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 PHA indicating that the student has established a separate

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

### **Absence Due to Incarceration**

If the head of household or other household member is sentenced to be incarcerated for more than 30 consecutive days or has been incarcerated for more than 60 days in a 12-month period, he or she will be considered permanently absent and will be terminated or removed from the household. The PHA will terminate assistance in accordance with the termination procedures contained in this Administrative Plan.

### **Absence of Children Due to Placement in Foster Care**

If the family includes a child or children temporarily absent from the home due to placement in foster care, the PHA will determine from the appropriate agency when the child/children will be returned to the home. If the time period is to be greater than six months from the date of removal of the child/children, the voucher size will be reduced. If all children are removed from the home permanently, the voucher size will be reduced in accordance with the PHA's subsidy standards.

### **Absence of Entire Family**

Families are required both to notify the PHA before they move out of a unit, and to give the PHA information about any family absence from the unit. If the entire family is absent from the assisted unit (i.e., no family member is residing in the unit) for more than 30 consecutive days, the unit will be considered to be vacated and the assistance will be terminated.

### **Reasonable Accommodation and Absences**

A person with a disability may request an extension of time as an accommodation, provided that the extension does not go beyond the HUD-allowed 180 consecutive calendar days limit.

If an absence that resulted in termination of assistance was due to a person's disability and the PHA can verify that the person was unable to notify the PHA in accordance with the family's responsibilities, and if funding is available, the PHA may reinstate the family as an accommodation if requested by the family (as long as the period was within 180 days).

### **Caretaker for Children**

If neither parent remains in the household and the appropriate agency has determined that another adult is to be brought into the assisted unit to care for the children for an indefinite period, the PHA will treat that adult as a visitor for the **first 30 days**. If by the end of that period, court-awarded custody or legal guardianship has been awarded to the caretaker, the voucher may be transferred to the caretaker.

If the appropriate agency cannot confirm the guardianship status of the caretaker, the PHA will review the status at 60-day intervals. If custody or legal guardianship has not been awarded by the court, but the action is in process, the PHA will secure verification from social services staff or the attorney as to the status.

When the PHA approves a person to reside in the unit as caretaker for the child/children, the caretaker's income should be counted pending a final disposition. The PHA will work with the appropriate service agencies and the landlord to provide a smooth transition in these cases.

### **Visitors**

Any adult not included in the household who has been in the unit more than 14 consecutive days without PHA approval, or a total of 30 days in a 12-month period, will be considered to be living in the unit as an unauthorized household member. The absence of evidence of any other address will be considered verification that the visitor is a member of the household. All people using the participant's address as their mailing address may be considered members of the household.

The burden of proof that the individual is a visitor rests on the family. In the absence of such proof, the individual may be considered an unauthorized member of the household and the PHA will terminate assistance since prior approval was not requested for the addition.

In a joint custody arrangement, if the minor is in the household less than 180 days per year, the minor will be considered to be an eligible visitor and not a family member.

### **Reporting Additional Household Members**

Reporting changes in household composition to the PHA is both a HUD and a PHA requirement. The Family Obligations require the family to request PHA approval to add an occupant of the unit and to inform the PHA of the birth, adoption, or court-awarded custody of a child. The family must request prior approval of additional household members in writing. Requests to add someone to the household can be made by completing an Interim Reexamination Form. If any new family member is added, the income of the additional member will be included in the family income. The PHA requires written approval from the owner when there are changes in family composition other than birth, adoption, or court-awarded custody. Additions to the household will have to go through eligibility screening. If a head of household marries while on the Housing Choice Voucher Program, the spouse must be added to the household and the spouse's income and assets will be included.

If the family does not obtain prior written approval from the PHA, any person the family has permitted to move in will be considered an unauthorized household member.

If a visitor continues to reside in the unit after the maximum allowable time, the family must report it to the PHA in writing within 10 days of the maximum allowable time.

## Reporting Absences

If a family member leaves the household, the family must report this change in writing to the PHA within 10 days of the change and certify whether the member is temporarily absent or permanently absent. Once verification of absence is obtained, the PHA will conduct an interim evaluation for changes that might affect the Total Tenant Payment.

## ANTICIPATING ANNUAL INCOME

PHAs are 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”. Policies related to anticipating annual income are provided below.

### Basis of Annual Income Projection

The PHA generally will use current circumstances to determine anticipated income for the coming 12 months. In the following situations, PHAs may use alternative methods to anticipate income:

- An imminent change in circumstances is expected
- It is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income)
- The PHA believes that past income is the best available indicator of expected future income

PHAs are 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.

The City of Westminster Housing Authority will use current tenant-provided documents to project annual income. Tenant-provided pay stubs must be current and consecutive, dated within the last 60 days of the interview date. The next chapter describes verification policies that will be followed.

Current data are reviewed and analyzed to anticipate annual income. A clear audit trail will be left to show how the PHA annualized projected income. When the PHA cannot anticipate income based upon current circumstances (e.g., seasonal employment, inconsistent working hours, or suspected fraud), historical data will be analyzed for patterns of employment, paid benefits, and any other income, and use the results of the analysis to establish anticipated 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 PHA to show why the historic pattern does not represent the family’s anticipated income.

## **Known Changes in Income**

As shown below, if the PHA verifies an upcoming increase or decrease in income, annual income will be calculated by applying each income amount to the appropriate part of the 12-month period.

Example: An employer reports that a full-time employee who has been receiving \$10/hour will begin to receive \$10.25/hour in the eighth week after the effective date of the reexamination. In such a case the PHA would calculate annual income as follows:

$(\$10/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$10.25 \times 40 \text{ hours} \times 45 \text{ weeks}).$

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases, the PHA will calculate annual income using current circumstances and then conduct an interim reexamination when the change actually occurs. When tenant-provided third party documents are used to anticipate annual income, they will be dated within the last 60 days of the reexamination interview date.

Example of Seasonal Employment: HUD permits PHAs to use two methods to project income for seasonal employment. If there is a 12-month history of seasonal employment, the PHA will take an average of three current pay stubs and multiply that by the number of weeks worked. Using this method, no interim reexaminations will be done for the months the seasonal employment stops. The income for a tenant who works only during the school year would be calculated as follows:

Average of three pay stubs x 42 weeks = projected annual income

If the seasonal employment is new without 12 months of history to analyze, current income would be annualized (e.g., \$400/week x 52 weeks), and an interim reexamination would be conducted when the income changes.

## **MINIMUM INCOME**

There is no minimum income requirement. Families reporting zero income are required to complete a written certification every month and submit copies of their monthly bills and provide information regarding how those bills are paid.

## **INCOME OF PERSON PERMANENTLY CONFINED TO NURSING HOME**

If a family member is permanently confined to a hospital or nursing home and there is a family member left in the household, the PHA will calculate the income of the permanently confined family member through one of the following two methods that will result in a lower payment by the family:

- Exclude the income and deductions of the member if his/her income goes directly to the facility, or
- Include the income and deductions of the member if his/her income goes to a family member.

## **EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES**

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 Earned Income Disallowance (EID) is available only to families that were eligible for and already participating in the program on or before February 14, 2023. Those families may continue receiving the benefits of EID until the allowed time frame expires but not longer than January 1, 2026.

## **BUSINESS INCOME**

Annual **business** 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 (IRS) 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”.

### **Business Expenses**

Net income is gross income minus business expenses. To determine business expenses that may be deducted from gross income, the PHA will use current applicable IRS rules for determining allowable business expenses (IRS Publication 535), unless a topic is addressed by HUD regulations or guidance as described below.

### **Business Expansion**

HUD regulations do not permit a PHA to deduct from gross income expenses for business expansion. Business expansion is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, a hair salon purchasing property to open a second location would be considered a business expansion.

## **REGULAR CONTRIBUTIONS AND GIFTS**

PHAs must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with an assisted family. Temporary, nonrecurring, or sporadic income and gifts are not counted.

Examples of regular contributions include:

- Regular payment of a family's bills (e.g., utilities, phone, rent, credit cards, car payments)
- Cash or other liquid assets provided to any family member on a regular basis
- In-kind contributions such as clothing and household goods provided to a family on a regular basis
- Statements for all types of accounts where regular contributions could be received will be required, including accounts such as PayPal, Venmo, and CashApp.

For contributions that may vary from month to month (e.g., utility payments), the PHA will include an average amount based upon past history.

If the family's expenses exceed its known income, the PHA will inquire of the family regarding contributions and gifts.

## **ALIMONY AND CHILD SUPPORT**

Regular alimony and child support payments are counted as income for calculation of Total Tenant Payment. It is the family's responsibility to supply a certified copy of the divorce decree or any court action regarding child support. If the amount of child support or alimony received is less than the amount awarded by the court, the PHA will use the amount awarded by the court unless the family can verify that they are not receiving the full amount. The PHA will accept verification that the family is receiving an amount less than the award if:

- The PHA receives verification from the agency responsible for enforcement or collection that covers the past twelve months to document the amount received by the family; or
- The family furnishes documentation of child support or alimony collection action filed through a child support enforcement/collection agency or has filed an enforcement or collection action through an attorney. The PHA will also have to receive documentation of the amount actually received over the past twelve months or a minimum of three months which would then be annualized to determine the 12 month anticipated income.

## **LUMP-SUM PAYMENTS**

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, are not included in income but may be included in assets. This section covers the two calculation methods as well as attorney fees associated with lump-sum payments.

Lump-sum payments caused by delays in processing periodic payments such as unemployment or welfare assistance are counted as income. Lump sum payments from Social Security or SSI are excluded from income. Deferred periodic payments that have accumulated due to a dispute will be treated the same as periodic payments that are deferred due to delays in processing.

The amount of retroactive tenant rent that the family owes as a result of the lump sum receipt will be calculated retroactively or prospectively depending on the circumstances. The PHA will calculate prospectively if the family reported the payment within 10 working days, and retroactively to date of receipt if the payment was not reported within 10 working days.

### **Prospective Calculation Method**

If the payment is reported within 10 working days, the calculation will be made prospectively and will result in an interim adjustment. The interim adjustment will be calculated by adding the lump sum in the same manner as for any interim that may occur prior to the next annual recertification.

### **Retroactive Calculation Method**

If the payment is not reported within 10 working days, the calculation will be made retroactive. The PHA will use the closer of either the date the lump-sum payment was received, or the date of admission. The PHA will determine the amount of income for each certification period, including the lump sum, and recalculate the tenant rent for each certification period to determine the amount due the PHA.

The family has the choice of paying this retroactive amount to the PHA in a lump sum. The amount owed by the family is a collectible debt even if the family becomes unassisted. The PHA may enter into a Repayment Agreement with the family.

### **Attorney Fees**

The family's attorney fees may be deducted from lump-sum payments when computing annual income if the attorney's efforts have recovered a lump-sum compensation, and the recovery paid to the family does not include an additional amount in full satisfaction of the attorney fees.

## **ASSETS**

There is no asset limitation for participation in the HCV Program. However, HUD requires that PHAs include in annual income the anticipated “interest, dividends, and other net income of any kind from real or personal property”. This section discusses how the income from various types of assets is determined. For most assets, the PHA must determine the value of the asset in order to compute income from the asset. All assets of household members need to be declared, including any joint accounts or other assets in which there are multiple owners. Therefore, for each asset type, this section covers how the value of the asset will be determined and how income from the asset will be calculated.

### **Income from Assets**

The PHA 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 PHAs 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 PHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income but the property is currently vacant, the PHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

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 PHA to show why the asset income determination does not represent the family’s anticipated asset income.

### **Valuing Assets**

The calculation of asset income sometimes requires PHAs to make a distinction between an asset’s market value and its cash value, as explained below:

- The market value of an asset is its worth in the market (e.g., the amount a buyer would pay for real estate or the total value of an investment account).
- The cash value of an asset is its market value minus all reasonable amounts that would be incurred when converting the asset to cash. Reasonable costs include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions.

## **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).

## **Imputing Income from Assets**

When net family assets are \$50,000 or less, the PHA 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 \$50,000, the PHA 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 an average passbook savings rate as determined by the PHA.

The PHA will initially set the imputed asset passbook rate at the national rate established by the Federal Deposit Insurance Corporation. The PHA will review the passbook rate every December. The rate will not be adjusted unless the current PHA rate is no longer within 0.75 percent of the national rate. If it is no longer within 0.75 percent of the national rate, the passbook rate will be set at the current national rate. Changes to the passbook rate will take effect on February 1 following the December review.

## **Contributions to Retirement Funds**

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 PHA must know whether the money is accessible before retirement.

- While an individual is employed, only the amount the family can withdraw without retiring or terminating employment is counted as an asset.
- After retirement or termination of employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate, except to the extent that it represents funds invested in the account by the family member. The balance in the account is counted as an asset only if it remains accessible to the family member.
- IRA, Keogh, and similar retirement savings accounts are counted as assets even though early withdrawal would result in a penalty.

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

The PHA must count assets disposed of for less than fair market value during the two years preceding certification or reexamination. The PHA will count the difference between the market value and the actual payment received in calculating total assets.

Assets disposed of as a result of foreclosure or bankruptcies are not considered to be assets disposed of for less than fair market value. Assets disposed of as a result of a divorce or separation are also not considered to be assets disposed of for less than fair market value.

The PHA's minimum threshold for counting assets disposed of for less than fair market value is \$50,000. If the total value of assets disposed of within a one-year period is less than \$50,000, they will not be considered an asset.

## **ADJUSTED INCOME**

Adjusted income is defined as the annual income minus any HUD allowable expenses and deductions. HUD has the following allowable deductions from annual income:

**Dependent Allowance:** \$480 each for family members (other than the head or spouse) who are minors, and for family members who are 18 and older who are fulltime students or who are disabled.

**Elderly/Disabled Allowance:** \$525 per family for families whose head or spouse is 62 or over or disabled.

**Allowable Medical Expenses:** Deducted for all family members of an eligible elderly/disabled family, to the extent the sum exceeds ten percent of annual income.

**Child Care Expenses:** Deducted for the care of children under 13 when childcare is necessary to allow an adult member to work, attend school, or actively seek employment.

**Allowable Disability Assistance Expenses:** Deducted for attendant care or auxiliary apparatus for people with disabilities if needed to enable the individual or an adult family member to work.

## **Anticipating Expenses**

Generally, the PHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., childcare during school and nonschool periods and cyclical medical expenses), the PHA 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 PHA will include as an eligible expense the portion of the debt that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. The PHA may require the family to provide documentation of payments made in the preceding year.

## **Health and Medical Expenses Deduction**

The sum of unreimbursed health and medical care and reasonable attendant care and auxiliary expenses that exceed 10 percent of the family's annual income can be deducted from annual income.

All families who received a deduction for unreimbursed health and medical care and/or reasonable attendant care or auxiliary apparatus expenses based on their most recent income review prior to January 1, 2024, will begin receiving the 24-month phased-in relief at their next annual reexamination or interim reexamination, whichever occurs first after January 1, 2024. Families who receive phased-in relief will have eligible expenses deducted that exceed 5 percent of annual income for 12 months. Twelve months after the 5 percent phase-in began, families will have eligible expenses deducted that exceed 7.5 percent of annual income for the immediately following 12 months. After the family has completed the 24 months phase-in at the lower thresholds, as described above, the family will remain at the 10 percent threshold, unless the family qualifies for relief under the general hardship relief provision.

Health and medical care expenses, as defined in 24 CFR § 5.603, include costs incurred for the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed. Medical insurance premiums continue to be eligible health and medical care expenses. However, health and medical care expenses may be deducted from annual income only if they are eligible and not otherwise reimbursed and may only be deducted for elderly or disabled families.

## **Hardship Exemptions to the Health and Medical Expenses Deduction**

### **General Relief**

To receive general relief related to the health and medical care expense and reasonable attendant care and auxiliary apparatus expense, a family must demonstrate that the family's unreimbursed health and medical care expenses or unreimbursed reasonable attendant care and auxiliary apparatus expenses increased, or the family's financial hardship is a result of a change in circumstances that would not otherwise trigger an interim reexamination.

Relief is available regardless of whether the family previously received an unreimbursed health and medical care expense deduction, unreimbursed reasonable attendant care and auxiliary apparatus expense deduction, are currently receiving phased-in hardship relief, or were previously eligible for either this general relief or the phased-in relief.

If a PHA determines that a family is eligible for general relief, the family will receive a deduction for the sum of the eligible expenses that exceed 5 percent of annual income. The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever comes earlier.

### Criteria for Hardship Exception

In order for a family to qualify for a hardship exception the family's circumstance must fall under one of the following HUD hardship criteria:

- The family is awaiting an eligibility determination for a federal, state, or local assistance program, such as a determination for unemployment compensation or disability benefits;
- The family's income decreased because of a loss of employment, death of a family member, or due to a natural or federal/state declared disaster; or
- The family would be evicted as a result of the imposition of the minimum rent requirement.

### Child Care Expenses

Any reasonable child-care expenses necessary to enable a member of the family to be employed or to further their education are deducted from income. Reasonable child-care expenses are expenses for the care of children (including foster children if the unreimbursed child-care expenses are paid from the family's annual income and not from another source, such as a stipend from the child welfare agency), under 13 years of age, when all the following statements are true:

- The care is necessary to enable a family member to be employed or to further his or her education (e.g., work, look for work, or further their academic or vocational);
- The expense is not reimbursed by an agency or individual outside the household; and

The expenses incurred to enable a family to work must not exceed the amount of employment income that is included in annual income.

If the childcare 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. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the childcare expenses.

If the childcare 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 be 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 childcare claimed.

If the childcare 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.

### **Eligible Child Care Expenses**

The type of care to be provided is determined by the assisted family. The PHA may not refuse to give a family the childcare expense deduction because there is an adult family member in the household that may be available to provide childcare.

**Allowable Child Care Activities**—For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of childcare. Childcare expenses paid to a family member who lives in the family's unit are not eligible; however, payments for childcare to relatives who do not live in the unit are eligible.

**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.

Childcare expenses will be considered for the time required for the eligible activity plus reasonable travel time. For childcare 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 childcare costs, the PHA will use the schedule of childcare costs from the local welfare agency. Families may present, and the PHA will consider, justification for costs that exceed typical costs in the community.

Allowing deductions for childcare expenses is based on the following guidelines:

**Childcare to work:** The maximum childcare expense allowed must be less than the amount earned by the person enabled to work which is included in the family's annual income. The "person enabled to work" will be the adult member of the household who earns the least amount of income from working.

**Childcare for school:** The number of hours claimed for childcare may not exceed the number of hours the family member is attending school, including reasonable travel time to and from school.

### **Hardship Exemption to Continue Child-Care Expense Deduction**

A family whose eligibility for the child-care expense deduction is ending may receive a hardship exemption to continue receiving a child-care expense deduction in certain circumstances when the family no longer has a member that is working, looking for

work, or seeking to further their education, and the deduction is necessary because the family is unable to pay their rent.

When a family requests a hardship exemption to continue receiving a child-care expense deduction that is ending, the PHA will recalculate the family's adjusted income and continue the child-care deduction if the family demonstrates to the PHA's satisfaction that the family is unable to pay their rent because of loss of the child-care expense deduction and the child-care expense is still necessary even though the family member is no longer working, looking for work, or furthering their education. The hardship exemption and the resulting alternative adjusted income calculation will remain in place for a period of up to 90 days. The PHA at their discretion, may extend such hardship exemptions for additional 90-day periods based on family circumstances.

### **Family Notification of Hardship Exemption**

The PHA will promptly notify families in writing of the change in the determination of adjusted income and the family's rent resulting from the application of the hardship exemption. The written notice will also inform the family of the dates that the hardship exemption will begin and expire and the requirement for the family to report to the PHA if the circumstances that made the family eligible for relief are no longer applicable. The notice will also state that the family's adjusted income and tenant rent will be recalculated upon expiration of the hardship exemption. The PHA must provide families with 30 days' notice of any increase in rent.

### **Family Notification of Hardship Exemption Denial**

The PHA will promptly notify families in writing if they are denied either an initial hardship exemption or an additional 90-day extension of the exemption. The notification will specifically state the reason for the denial.

### **Family Notification of Hardship Exemption Termination**

The PHAs will notify the family if the hardship exemption is no longer necessary and will be terminated because the circumstances that made the family eligible for the exemption are no longer applicable. The notice will state the termination date and provide 30 days' notice of a rent increase, if applicable.

## **CALCULATING FAMILY SHARE AND PHA SUBSIDY**

HUD regulations specify the formula for calculating 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

10 percent of the family's monthly gross income

A minimum rent between \$0 and \$50 that is established by the PHA

The PHA has authority to suspend and exempt families from minimum rent when a financial hardship exists. 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.

### **Minimum Rent**

Minimum rent refers to the Total Tenant Payment calculated by the PHA and includes the combined amount a family pays towards rent and/or utilities. The PHA's minimum rent is \$50.

### **Family Share**

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the PHA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy the PHA 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.

### **PHA Subsidy**

The PHA 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.

### **Utility Reimbursement**

When the PHA subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement. HUD permits the PHA to pay the reimbursement to the family or directly to the utility provider.

### **Proration of Assistance for Mixed Families**

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 PHA must prorate the assistance provided to a mixed family. The PHA 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 PHA subsidy for a family is calculated at \$500 and two of four family members are ineligible, the PHA subsidy would be reduced to \$250.

### **Applying Payment Standards**

The PHA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of the PHA's payment standards. 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)".

The payment standard for a family is the lower of (1) the payment standard for the family voucher size, which is defined as the appropriate number of bedrooms for the family under the PHA's subsidy standards, or (2) the payment standard for the size of the dwelling unit rented by the family.

The PHA 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 the owner lowers the rent during the term of the HAP contract for the family's unit, the PHA will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit.

### **Changes in Payment Standard**

When the PHA 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 a PHA changes its payment standard schedule, resulting in a lower payment standard amount during the term of a HAP contract, the PHA is not required to reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect. However, if the PHA chooses to reduce the payment standard for families currently under a HAP contract, the initial reduction to the payment standard may not be applied any earlier than the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount. At that point the PHA may either reduce the payment standard to the current amount in effect on the PHA's payment standard schedule or may reduce the payment standard to another amount that is higher than the normally applicable amount on the schedule.

In any case, the PHA must provide the family with at least 12 months' notice that the payment standard is being reduced before the effective date of the change. The PHA's policy on decreases in the payment standard during the term of the HAP contract applies to all families under HAP contract at the time of the effective date of the decrease in the payment standard.

**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.

**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 PHA is allowed to establish a higher payment standard for the family of not more than 120 percent of the published Fair Market Rent.

## **UTILITY ALLOWANCE AND UTILITY REIMBURSEMENT PAYMENTS**

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. A family's utility allowance is determined by the size of dwelling unit leased by a family or the voucher unit size for which the family qualifies using PHA subsidy standards, whichever is the lower of the two. The approved utility allowance schedule is given to families along with their voucher. The utility allowance is based on the actual voucher size issued.

The utility allowance is intended to cover the cost of utilities not included in the rent. The allowance is 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. Allowances are not based on an individual family's actual energy consumption.

The PHA's utility allowance schedule, and the utility allowance for an individual family, must include the utilities and services that are necessary in the locality to provide housing that complies with the housing quality standards. The PHA may not provide any allowance for non-essential utility costs, such as costs of cable or satellite television.

The PHA must classify utilities in the utility allowance schedule according to the following general categories: heating, air conditioning, cooking, water heating, water, sewer, trash collection, other electric, refrigerator (for tenant supplied refrigerator), range (for tenant supplied range); and other specified services. An allowance for tenant-paid air conditioning will be provided if the unit has central air conditioning. For any utilities that the tenant is responsible to pay, those utilities must be metered individually for that unit if it is in a multi-unit building.

The PHA will review the utility allowance schedule annually. If the review finds a utility rate has changed by 10 percent or more since the last revision of the utility allowance schedule, the schedule will be revised to reflect the new rate. Revised utility allowances will be applied in a participant family's rent calculation at their next reexamination.

## CHAPTER 8 VERIFICATION PROCEDURES

### INTRODUCTION

The PHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain written authorization from the family in order to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. The PHA will not pass on the cost of verification to the family.

This chapter summarizes the verification requirements as well as the PHA's policies. The first section describes the general verification process, and the second section provides more detailed requirements related to family information. Information regarding verifying income and assets and mandatory deductions follows. If needed, modifications will be made to verification policies, rules, and procedures to accommodate individuals with disabilities.

### Consent Forms

All adult applicants must sign Authorization for the Release of Information (Forms HUD-9886) -the consent form- at admission, and all adult participants must sign the consent form no later than their next interim or regularly scheduled income reexamination. The purpose of HUD-9866 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. Only HUD is authorized to collect information directly from the Internal Revenue Service and the Social Security Administration. In addition, family members will be required to sign specific authorization forms when information is needed to determine the family's eligibility and level of assistance that is not covered by the HUD-9886. HUD and the PHA may collect information from current and former employers of adult family members. After January 1, 2024, once a Housing Choice Voucher program applicant or participant has signed and submitted a consent form, they do not need to resign a subsequent HUD-9886 at the next interim or regularly scheduled income examination except under the following circumstances:

- When any person 18 years or older becomes a member of the family.
- When a member of the family turns 18 years of age; and
- As required by HUD or the PHA in administrative instructions.

### Revocation of Consent

The executed consent form (Form HUD-9886) will remain effective until the family is denied assistance, the assistance is terminated, or if the family provides written notification to the PHA to revoke consent.

Revoking consent will result in termination or denial of assistance .

## **Penalties for Failing to Consent**

If any family member who is required to sign a consent form fails to do so, the PHA will deny admission to applicants and terminate assistance of participants. The PHA will inform the applicant families that they may request an informal review. The PHA will inform the participant families that they may request an informal hearing according to PHA procedures.

## **GENERAL VERIFICATION REQUIREMENTS**

HUD has a verification hierarchy and mandates the use of their Enterprise Income Verification (EIV) system and provides administrative guidance on the use of other methods and the circumstances in which they will be used. In general, HUD requires PHAs to use the most reliable form of verification that is available and to document the circumstances that cause the PHA to use a lesser form of verification.

The PHA will verify information through the six methods of verification acceptable to HUD in the following order:

- Up-front Income Verification (UIV) using HUD's EIV system
- UIV using a non-HUD system
- Written Third-Party Verification
- Oral Third-Party Verification
- Review of Documents
- Self-Certification

The PHA will allow two weeks for return of third-party written verifications before going to the next method. The PHA will document in the file as to why third-party written verification was not used. For applicants, verifications may not be more than 60 days old at the time of voucher issuance. For participants, they are valid for 90 days from date of receipt.

### **Up-Front Income Verification (UIV)**

UIV refers to the PHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits, such as Equifax's Consumer Employment and Income Report. UIV will be used to the extent that these systems are available to the PHA. The PHA will inform all applicants and participants of its use of UIV resources during the admission and reexamination process. The PHA is required to access HUD's EIV system and will use other UIV resources if available.

There may be a legitimate difference between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no

adverse action will be taken against a family until the PHA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through the informal review/hearing process.

### **Third-Party Written Verification**

Third-party verification is used to verify information directly with the source. Third-party written verification forms will be sent and returned via First Class mail, fax, or e-mail. The family will be required to sign an authorization for the source to release the specified information. Any verification received electronically and directly from the source will be considered a third-party written verification. Third-party verification forms may not be hand carried by the family.

The PHA will accept verifications in the form of computerized printouts delivered by the family from the following entities including but not limited to:

- Social Security Administration
- Veterans Administration
- Pharmacies
- Welfare Assistance
- Life Insurance Printouts
- Unemployment Compensation Board
- City or County Courts

When third-party verification has been requested and the timeframes for submission have been exceeded, the PHA will use the information from documents on a provisional basis. If the PHA 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 PHA will conduct an interim reexamination to adjust the figures used for the reexamination, regardless of the PHA's interim reexamination policy.

The PHA will determine that third-party verification is not available if there is an expense to the family and will accept a review of the original document such as a bank statement.

### **Third-Party Oral Verification**

Oral third-party verification will be used when written third-party verification is delayed or not possible. When third-party oral verification is used, PHA staff will initiate the call and note the person with whom they spoke, the date of the conversation, and the facts provided. If oral third-party verification is not available, the PHA will compare the information to any documents provided by the family.

### **Review of Documents**

If up-front income verification, third-party written or oral verification is unavailable, or the information has not been verified by the third party within three weeks, the PHA will annotate the file accordingly and review documents provided by the family as the

primary source as long as the documents provide complete information. All documents will be photocopied and/or scanned and retained in the file. The PHA will accept the following documents from the family, provided that the documents are such that tampering or altering would be easily detected:

- Printed wage stubs
- Computer printouts from the employer
- Proof-of income letters that have been notarized
- Current bank statements
- Statements from person-to-person payment platforms such as CashApp, Venmo, PayPal, etc.
- Pharmacy prescription printouts
- Life Insurance printouts with cash value

The PHA will accept photocopies and documents received electronically. If it is confirmed via third-party verification that documents submitted by a family have been altered or changed, the PHA will proceed with terminating the family's housing assistance for fraud.

If third-party verification is received after documents have been accepted as provisional verification and there is a discrepancy, the PHA will utilize the third-party verification. The PHA will not delay the processing of an application beyond 14 days because a third-party information provider does not return the verification in a timely manner.

### **Self-Certification/Self-Declaration**

Families will be required to submit a self-certification/declaration if the PHA is unable to obtain third-party verification or view documents to verify information. Self-certification means a notarized affidavit or certification made under penalty of perjury.

### **ITEMS TO BE VERIFIED**

All income not specifically excluded by regulations will be verified. The following items must be verified:

- Full-time student status including high school students who are 18 or over.
- Current assets including assets disposed of for less than fair market value in the preceding two years.
- Childcare expense that allows an adult family member to be employed, to actively seek work, or to further his/her education.
- Total medical expenses of all family members in households whose head or spouse is elderly or disabled.
- Disability expenses for costs associated with attendant care or auxiliary apparatus for a disabled member, which allow an adult family member to be employed.
- Disability for determination of preferences, allowances, or deductions.
- U.S. citizenship/eligible immigrant status.

- Social Security Numbers for all family members.
- Preference status for the waiting list.
- Familial or Marital status when needed for head of household or spouse.
- Reduction in welfare benefits for noncompliance or fraud.

## **INCOME VERIFICATION**

### **Employment Income**

Verification forms request the employer to specify:

- Dates of employment
- Amount and frequency of pay
- Date of the last pay increase
- Likelihood of change of employment status and effective date of any known salary increase during the next 12 months
- Year-to-date earnings
- Estimated income from overtime, tips, and bonus pay expected the next 12 months

Acceptable methods of verification include, in this order:

- Employment verification form completed by the employer.
- Check stubs or earning statements, which indicate the employee's gross pay, frequency of pay, or year-to-date earnings.
- W-2 forms and income tax returns.
- Income tax returns or self-certifications signed by the family may be used for verifying self-employment income, or income from tips and other gratuities.

Applicants and program participants may be requested to sign an authorization for release of information from the Internal Revenue Service for further verification of income. Where doubt regarding income exists, a referral to IRS for confirmation will be made on a case-by case basis.

### **Social Security, Supplementary Security Income (SSI), Disability Income Verification**

Acceptable methods of verification include, in this order:

- HUD's EIV
- Benefit verification form completed by the agency providing the benefits.
- Award or benefit notification letters from the providing agency dated no more than 60 days prior to submission by tenant.
- Computer report electronically obtained or in hard copy.

### **Unemployment Compensation**

- HUD's EIV

- Verification form completed by the unemployment compensation agency.
- Computer report electronically obtained or in hard copy, from unemployment office stating payment dates and amounts.

### **Welfare Payments or General Assistance**

Acceptable methods of verification include, in this order:

- PHA verification form completed by payment provider.
- Written statement from payment provider indicating the amount of grant/payment, start date of payments, and anticipated changes in payment in the next 12 months.
- Computer-generated Notice of Action.

### **Pensions**

Acceptable methods of verification include, in this order:

- Third-party written verification
- Current check stub
- Current letter from source with payment amount

### **Alimony or Child Support Payments Verification**

Acceptable methods of verification include, in this order:

- Verification from the Bureau of Support and Enforcement.
- A third-party verification sent to the person paying the support.
- A notarized letter from the person paying the support.
- Family's notarized self-certification of amount received or that support payments are
- not being received.
- Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules.

### **Net Income from a Business**

To verify the net income from a business, the PHA will view IRS and financial documents from prior years and use this information to anticipate the income for the next 12 months. Methods of verification include:

- IRS Form 1040, including Schedule C (Small Business), Schedule E (Rental Property Income), and Schedule F (Farm Income).
- Audited or unaudited financial statement(s) of the business. 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.

- Credit report or loan application within the prior six months.

Documents such as manifests; appointment books; -, bank statements; statements from money transfer services such as Square, CashApp, Venmo, and PayPal; and receipts will be used as a guide for the prior six months (or lesser period if not in business for six months) to project income for the next 12 months. The family will be advised to maintain these documents in the future if they are not available at the time of request.

### **Child and Adult Care Business**

If an applicant/participant is operating a licensed day care business, income will be verified as with any other business.

If the applicant/participant is operating a "cash and carry" operation (which may or may not be licensed), the PHA may require that the applicant/participant complete a form for each customer which indicates: name of person(s) whose child (children) is/are being cared for, phone number, number of hours child is being cared for, method of payment (check/cash), amount paid, and signature of person.

### **Recurring Contributions and Gifts**

Third-party verification will be attempted first for recurring contributions and gifts. The family may be allowed to submit a notarized letter from the person contributing regularly to household expenses, or as a last resort, the family may furnish a self-certification for any regular contributions and gifts that should contain the following information:

- The person who provides the gifts
- The value of gifts
- The regularity (dates) of the gifts
- The purpose of the gifts

### **Zero Income Status**

Families claiming to have no income will be required to submit monthly verification forms that no earned or unearned income is being received by the family. Unearned income includes unemployment benefits, TANF, SSI, and contributions from outside the household. Monthly bills will need to be submitted along with an explanation of how these bills are being paid.

### **Full-time Student Status for 18-Year-Olds and Older**

Only the first \$480 of the earned income of full-time students, other than head, co-head, or spouse, will be counted towards family income. Financial aid, scholarships, and grants are not counted towards family income; however, excess grant money refunded to the student is counted. Verification of full-time student status can include:

- Written verification from the registrar's office or other school official.
- School records indicating enrollment in a sufficient number of credits to be considered a full-time student by the educational institution.

## **ASSETS**

### **Savings Account Interest Income and Dividends**

Acceptable methods of verification include, in this order:

- Account statements, passbooks, certificates of deposit, or PHA verification forms completed by the financial institution.
- Broker's statements showing value of stocks or bonds and the earnings credited to the family. IRS Form 1099 from the financial institution, provided that the PHA must adjust the information to project earnings expected for the next 12 months.

### **Interest Income from Mortgages or Similar Arrangements**

Acceptable methods of verification include, in this order:

- A letter from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for next 12 months. (A copy of the check paid by the buyer to the family is not sufficient unless a breakdown of interest and principal is shown.)
- Amortization schedule showing interest for the 12 months following the effective date of the certification or recertification.

### **Net Rental Income from Property Owned by Family**

Acceptable methods of verification include, in this order:

- IRS Form 1040 with Schedule E (Rental Income).
- Copies of latest rent receipts, leases, or other documentation of rent amounts.
- Documentation of allowable operating expenses of the property: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

## **Verification of Assets**

### **Family Assets**

The PHA will require the information necessary to determine the current cash value of the family's assets (the net amount the family would receive if the asset were converted to cash). Acceptable verification may include verification forms, letters, or documents from a financial institution or broker.

- Passbooks, checking account statements, certificates of deposit, bonds, or financial statements completed by a financial institution or broker.
- Quotes from a stockbroker or realty agent as to net amount family would receive if they liquidated securities or real estate.

- Real estate tax statements if the approximate current market value can be deduced from assessment.
- Financial statements for business assets.
- Copies of closing documents showing the selling price and the distribution of the sales proceeds.
- Appraisals of personal property held as an investment.
- Family's self-certification describing assets or cash held at the family's home or in safe deposit boxes.

### **Assets Disposed of for Less than Fair Market Value During Two Years Preceding Effective Date of Certification or Recertification**

For all certifications and recertifications, the PHA will obtain the family's certification as to whether any member has disposed of assets for less than fair market value during the two years preceding the effective date of the certification or recertification. If the family certifies that they have disposed of assets for less than fair market value, verification (preferably third party) is required that shows:

- All assets disposed of for less than fair market value
- The date assets were disposed
- The amount the family received
- The market value of the assets at the time of disposition. Assets disposed of for less than fair market value because of foreclosure will not be counted.

## **VERIFICATION OF ALLOWABLE DEDUCTIONS FROM INCOME**

### **Child Care Expenses**

Written verification from the person who receives the payments is required. If the childcare provider is an individual, he/she must provide a statement of the amount they are charging the family for their services. Verifications must specify the childcare provider's name, address, telephone number, the names of the children cared for, the number of hours the childcare occurs, the rate of pay, and the typical yearly amount paid, including school and vacation periods.

### **Medical Expenses**

All expense claims will be verified by one or more of the following methods:

- Written verification by a doctor, hospital or clinic personnel, dentist, or pharmacist of the previous 12 months of out-of-pocket medical costs incurred by the family and regular payments due on medical bills that will be used to anticipate future medical expenses.
- Written confirmation by the insurance company or employer of health insurance premiums to be paid by the family.

- Written confirmation from the Social Security Administration of Medicare premiums to be paid by the family over the next 12 months.
- Receipts, canceled checks, or pay stubs that verify medical costs and insurance expenses likely to be incurred in the next 12 months.
- Copies of payment agreements or most recent invoices that verify payments made on outstanding medical bills that will continue over all or part of the next 12 months.
- Receipts or other records of medical expenses incurred during the past 12 months that can be used to anticipate future medical expenses. PHA may use this approach for “general medical expenses” such as nonprescription drugs and regular visits to doctors or dentists, but not for one-time, nonrecurring expenses from the previous year.
- Medical expenses for attendant care will be verified by:
  - A reliable, knowledgeable health care professional’s certification that the assistance of an attendant is necessary as a medical expense and a projection of the number of hours the care is needed for calculation purposes.
  - Attendant’s written confirmation of hours of care provided and amount and frequency of payments received from the family or agency (or copies of canceled checks the family used to make those payments) or stubs from the agency providing the services.

### **Assistance to Persons with Disabilities**

Verification should include a written certification from a competent health care professional stating that the person with disabilities requires the services of an attendant or the use of auxiliary apparatus to permit him or her to be employed or to function independently to enable another family member to be employed. The family must also certify as to whether they receive reimbursement for any of the expenses of disability assistance and the amount of any reimbursement received. For attendant care, verification must include:

- Attendant’s written certification of amount received from the family, frequency of receipt, and hours of care provided.
- Certification of family and attendant and/or copies of canceled checks family used to make payments.

For auxiliary apparatus, verification must include:

- Receipts for purchases or proof of monthly payments and maintenance expenses for auxiliary apparatus.

## **VERIFYING NONFINANCIAL FACTORS**

### **Verification of Legal Identity**

To prevent program abuse, the PHA will require applicants to furnish verification of legal identity for all family members. The documents listed below will be considered acceptable verification of legal identity for adults. If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required.

- Birth Certificate
- Naturalization papers
- Current, valid driver's license
- U.S. military discharge (DD 214)
- U.S. Passport
- Voter's registration
- Company/agency identification card
- Department of Motor Vehicles identification card
- Hospital records
- Church-issued baptismal certificate

Documents considered acceptable for the verification of legal identity for minors may be one or more of the following:

- Birth Certificate
- Adoption papers/foster care documents
- Custody agreement
- Health and Human Services ID
- School records

### **Verification of Marital Status**

The following documentation to verify marital status is acceptable:

- Certified copy of the divorce decree, signed by a Court Officer.
- Copy of court-ordered maintenance or separation agreement.
- Marriage certificate

### **Familial Relationships**

Applicants and program participants are required to identify the relationship of each household member to the head of household. Certification will normally be considered sufficient verification of family relationships. In cases where reasonable doubt exists, the family will be asked to provide verification.

- Verification of familial relationship:
  - Official identification showing names

- Birth Certificates
- Baptismal certificates
- Verification of custody or guardianship:
  - Court-ordered assignment
  - Verification from social services agency
  - School records
  - Notarized letter from other parent with the days and schedule regarding custody

### **Verification of Permanent Absence of Family Member**

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 the fact that the person is no longer a member of the family. The PHA will consider any of the following as verification:

- Husband or wife institutes divorce action.
- Husband or wife institutes legal separation.
- Order of protection/restraining order obtained by one family member against another.
- Proof of another home address, such as utility bills, canceled rent checks, driver's license, lease, or rental agreement.
- Statements from other agencies such as Social Services, or a written statement from the landlord or manager that the adult family member is no longer residing in the unit.
- If the adult family member is incarcerated, a document from the court or correctional facility stating the length of time of incarceration.

### **Verification of Change in Family Composition**

The PHA may verify changes in family composition (either reported or unreported) through letters, telephone calls, utility records, inspections, landlords, neighbors, school records, Department of Motor Vehicle records, criminal records, United States Postal Service verifications, and other reliable sources.

### **Verification of Disability**

The PHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The PHA is not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA will not place this

information in the tenant file. Under no circumstances will the PHA request a participant's medical record(s).

For family members claiming disability who do not receive disability benefits from the Social Security Administration (SSA), a knowledgeable health care professional must provide third-party verification that the family member meets the HUD definition of disability.

### **Verification of Citizenship/Eligible Immigrant Status**

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 people.

Eligible immigrants must fall into one of the categories specified by the regulations and must have their status verified by Immigration and Naturalization Service (INS). Each family member must declare his or her status once. Assistance cannot be delayed, denied, or terminated while verification of status is pending except that assistance to applicants may be delayed while the PHA hearing is pending.

Citizens or Nationals of the United States are required to sign a declaration under penalty of perjury. The PHA will require citizens to provide documentation of citizenship.

Acceptable documentation will include at least one of the following original documents:

- United States birth certificate
- United States passport
- Resident alien/registration card
- Social Security card

Eligible immigrants 62 or over are required to sign a declaration of eligible immigration status and provide proof of age.

Non-citizens with eligible immigration status must sign a declaration of status and verification consent form and provide their original immigration documents to be photocopied. The PHA verifies the status through the INS SAVE system. If this primary verification fails to verify status, the PHA must request within 10 days that the INS conduct a manual search.

Ineligible family members who do not claim to be citizens or eligible immigrants must be listed on a statement of ineligible family members signed by the head of household or spouse.

Noncitizen students on student visas are ineligible members even though they are in the country lawfully. They must provide their student visa, but their status will not be verified, and they do not sign a declaration but are listed on the statement of ineligible members.

If an applicant or participant family member fails to sign required declarations and consent forms or provide documents, as required, they must be listed as an ineligible member. If the entire family fails to provide and sign as required, the family may be denied or terminated for failure to provide required information.

### **Time of Verification**

For applicants at the initial application, verification of U.S. citizenship/eligible immigrant status occurs at the same time as verification of other factors for final eligibility determination. The PHA will not provide assistance to any family prior to the affirmative establishment and verification of the eligibility of the individual or at least one member of the family.

Verification of U.S. citizenship/eligible immigrant status for portability families must be obtained if the initial PHA does not supply the documents.

### **Extensions of Time to Provide Documents**

The PHA will grant an extension of 30 days for families to submit evidence of eligible immigrant status.

### **Acceptable Documents of Eligible Immigration**

The regulations stipulate that only the following documents are acceptable unless changes are published in the Federal Register.

- Resident Alien Card (I-551)
- Alien Registration Receipt Card (I-151)
- Arrival-Departure Record (I-94)
- Temporary Resident Card (I-688)
- Employment Authorization Card (I-688B)
- Receipt issued by the INS for issuance of replacement of any of the above documents that shows individual's entitlement has been verified

A birth certificate is not acceptable verification of status. All documents in connection with U.S. citizenship/eligible immigrant status must be kept five years.

The PHA will verify the eligibility of a family member at any time such eligibility is in question, without regard to the position of the family on the waiting list.

If the PHA determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside permanently in the family's unit, the family's assistance will be terminated and they will not be eligible for assistance for five years, unless the ineligible individual has already been considered in prorating the family's assistance.

## Verification of Social Security Numbers

Social Security Numbers must be provided as a condition of eligibility for all family members. Verification of Social Security Numbers will be the Social Security card issued by the Social Security Administration. If a family member cannot produce a Social Security card, only the documents listed below showing his or her Social Security Number may be used for verification. The family is also required to provide a written certification that the document(s) submitted in lieu of the Social Security Card is/are complete and accurate:

- A driver's license
- Identification card issued by a federal, state, or local agency
- Identification card issued by a medical insurance company or provider (including Medicare and Medicaid)
- An identification card issued by an employer or trade union
- Earnings statements or payroll stubs
- Bank statements
- IRS Form 1099
- Benefit award letters from government agencies
- Retirement benefit letter
- Life insurance policies
- Court records such as real estate, tax notices, marriage and divorce, judgment or bankruptcy records
- Verification of benefits from the Social Security Administration

New family members will be required to produce their Social Security card or provide the substitute documentation described above together with their certification that the substitute information provided is complete and accurate. This information is to be provided at the time the change in family composition is reported to the PHA.

If an applicant or participant is able to disclose the Social Security number but cannot meet the documentation requirements, the applicant or participant must sign a certification to that effect provided by the PHA. The applicant/participant or family member will have an additional 60 days to provide proof of the Social Security number. If they fail to provide this documentation, the family's assistance will be terminated.

In the case of an individual at least 62 years of age, the PHA may grant an extension for an additional 60 days to a total of 120 days. If, at the end of this time, the elderly individual has not provided documentation, the family's assistance will be terminated.

## **VERIFICATION OF WAITING LIST PREFERENCES**

### **Local Preferences**

#### **Residency Preference**

Families whose head of household, spouse, or co-head live or work in the jurisdiction of Westminster Housing Authority must provide one or more of the following documents:

- Rent receipts pre-printed with landlord's information
- Current lease
- Current utility bill
- Employer or agency records indicating a current local address for the applicant and/or employer.

#### **Working in the City of Westminster**

If claiming employment to meet the preference, the employment must be paid, verifiable, and reported to all applicable agencies (i.e., IRS, TANF, etc.). If an applicant is on temporary disability from the job that is the qualification for this preference, the applicant must still be employed by the company and eligible to return upon medical reinstatement.

For families whose head of household, spouse, or co-head has been hired to work in the City of Westminster, third-party verification from the employer or statement on company letterhead will be required.

#### **Disability Preference**

This preference is available for families with a member who has a disability as defined in this Administrative Plan. The following verifications are accepted:

- Documentation from a doctor or other knowledgeable professional. The PHA will not inquire as to the nature of the disability except as to verify necessity for accessible unit.
- Award letter or other proof of eligibility for Social Security Disability or Supplemental Security Income.

#### **Homeless Preference**

Families who claim to be homeless in the City of Westminster must provide business verification that they are living in a sponsored homeless shelter in the city and are receiving case management from the shelter programs sponsored by Human Services Programs of Carroll County.

## Domestic Violence

For families who claim a preference for domestic violence. The following documentation/certifications will be required:

A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.

- A federal, state, tribal, territorial, or local police report or court record, or
- An administrative record that the family members involved have been through a counseling program and the service provider believes that reconciliation is likely.
- Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a mental health professional; or a medical professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The above preferences are equal and will carry the same wait time. Applicants can only claim one preference.

## **CHAPTER 9 REQUEST FOR TENANCY APPROVAL AND CONTRACT EXECUTION**

### **INTRODUCTION**

The PHA's program operations are designed to utilize available resources in a manner that is efficient and provides eligible families timely assistance based on the number of units that have been budgeted. The PHA's objectives include maximizing HUD funds by providing assistance to as many eligible families and for as many eligible units as the budget will allow.

After families are issued a voucher, they may search for a unit anywhere within the jurisdiction of the PHA, or outside of the PHA's jurisdiction if they qualify for portability. The family will not be eligible to move to another jurisdiction during the initial term of the of participation. The family must find an eligible unit under the program rules, with an owner/landlord who is willing to enter into a Housing Assistance Payments Contract with the PHA. This chapter defines the types of eligible housing, the PHA's policies which pertain to initial inspections, lease requirements, owner disapproval, and the processing of Requests for Tenancy Approval (RFTA).

### **REQUEST FOR TENANCY APPROVAL**

The Request for Tenancy Approval (RFTA) and a copy of the proposed lease, including the HUD prescribed tenancy addendum, must be submitted by the family during the term of the voucher. The family must submit the Request for Tenancy Approval in the form and manner required by the PHA.

The PHA will not permit the family to submit more than one RFTA at a time. The Request for Tenancy Approval must be signed by both the owner and voucher holder. The PHA will review the proposed lease and the RTA documents to determine whether or not they are approvable. The request will be approved if:

- The unit is an eligible type of housing;
- The unit meets HUD's **NSPIRE Standards** (and any additional criteria as identified in this Administrative Plan);
- The rent is reasonable;
- The security deposit is approvable in accordance with any limitations in this plan;
- The proposed lease complies with HUD and PHA requirements (see "Lease Review" section below); and
- The owner is approvable, and there are no conflicts of interest (see "Owner Disapproval" section below).

In addition to the above, at the time a family initially receives assistance in a unit (new admissions and moves), if the gross rent for the unit exceeds the applicable payment standard for the family, the family share of rent may not exceed 40 percent of the family monthly adjusted income.

## **Disapproval of RFTA**

If the PHA determines that the request cannot be approved for any reason, the landlord and the family will be notified by phone and, if necessary, in writing. The PHA will instruct the owner and family on the steps that are necessary to approve the request.

When, for any reason, an RFTA is not approved, the PHA will furnish another RFTA form so that the family can continue to search for eligible housing.

## **ELIGIBLE TYPES OF HOUSING**

The PHA will approve any of the following types of housing in the voucher program:

- All structure types can be utilized;
- Manufactured homes where the tenant leases the mobile home and the pad;
- Units owned (but not subsidized) by the PHA following HUD-prescribed requirements;
- Units owned by the City of Westminster but not the PHA.

A family can own a rental unit but cannot reside in it while being assisted, except in the case when the tenant owns the mobile home and leases the pad (only allowed due to reasonable accommodation). A family may lease in and have an interest in a cooperative housing development.

The PHA will not permit a voucher holder to lease a unit that is receiving project-based Housing Choice Voucher or any duplicative rental subsidies.

## **LEASE REVIEW**

The PHA will review the lease, particularly noting the approvability of optional charges and compliance with regulations and state and local law. The tenant also must have legal capacity to enter a lease under state and local law. Responsibility for utilities, appliances and optional services must correspond to those provided on the Request for Tenancy Approval.

The family and owner must submit a standard form of lease used in the locality by the owner and that is generally used for other unassisted tenants in the premises. The terms and conditions of the lease must be consistent with state and local law.

The lease must specify:

- The names of the owner, tenant, and other household members;
- The address of the unit rented (including apartment number, if any);
- The amount of the monthly rent to owner;
- The utilities and appliances to be supplied by the owner;
- The utilities and appliances to be supplied by the family; and
- The lease dates must correspond with the contract dates.

The City of Westminster Housing Authority's Tenancy Addendum, including the HUD prescribed tenancy addendum, must be included in the lease word-for-word before the lease is executed.

The owner's lease (for dwellings built before 1978) must include the Lead Warning Statement and disclosure information required by 24 CFR 35.92(b).

The lease must provide that drug-related criminal activity engaged in by the tenant, any household member, or any guest on or near the premises, or any person under the tenant's control on the premises is grounds to terminate tenancy.

The lease must also provide that owner may evict family when the owner determines that:

- Any household member is illegally using a drug; or
- A pattern of illegal use of drug by any household member interferes with the health, safety or right to peaceful enjoyment of the premises by other residents.

The lease must provide that the following types of criminal activity by a "covered person" are grounds to terminate tenancy:

- Any criminal activity that threatens the health, safety or 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, safety or 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 by a tenant, household member, or guest; or
- Any violent criminal activity on the premises by any other person under the tenant's control.

The lease must provide that the owner may terminate tenancy if a tenant is:

- Violating a condition of probation or parole imposed under Federal or State law; or
- Fleeing to avoid prosecution or custody or confinement after conviction for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees (high misdemeanor in NJ).

### **Actions before Lease Term**

The following actions must always be completed before the beginning of the initial term of the lease for a unit:

- The PHA has inspected the unit and has determined that the unit satisfies the **NSPIRE standards**;
- The PHA has determined that the rent charged by the owner is reasonable;

- The landlord and the tenant have executed the lease, including the HUD-prescribed tenancy addendum;
- The PHA has approved leasing of the unit in accordance with program requirements;
- When the gross rent exceeds the applicable payment standard for the family, the PHA must determine that the family share (total family contribution) will not be more than 40% of the family's monthly adjusted income.

## **SEPARATE AGREEMENTS**

Separate agreements are not necessarily illegal side agreements. Families and owners will be advised of the prohibition of illegal side payments for additional rent, or for items normally included in the rent of unassisted families, or for items not shown on the approved lease.

The family is not liable under the lease for unpaid charges for items covered by separate agreements and nonpayment of these agreements cannot be cause for eviction.

Owners and families may execute separate agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease if the agreement is in writing and approved by the PHA.

Any appliances, services or other items which are routinely provided to unassisted families as part of the lease (such as air conditioning, dishwasher or garage) or are permanently installed in the unit, cannot be put under separate agreement and must be included in the lease. For there to be a separate agreement, the family must have the option of not utilizing the service, appliance or other item.

If the family and owner have come to a written agreement on the amount of allowable charges for a specific item, so long as those charges are reasonable and not a substitute for higher rent, they will be allowed.

All agreements for special items or services must be attached to the lease approved by the PHA. If agreements are entered into at a later date, they must be approved by the PHA and attached to the lease.

## **RENT LIMITATIONS**

The PHA will make a determination as to the reasonableness of the proposed rent in relation to comparable units available for lease on the private unassisted market, and the rent charged by the owner for a comparable unassisted unit in the building or premises.

By accepting each monthly housing assistance payment from the PHA, 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 is required to provide the PHA

with information requested on rents charged by the owner on the premises or elsewhere.

At all times during the tenancy, the rent to owner may not be more than the most current reasonable rent as determined by the PHA.

### **DISAPPROVAL OF PROPOSED RENT**

In any of the programs, if the proposed gross rent is not reasonable, at the family's request the PHA will negotiate with the owner to reduce the rent to a reasonable rent or include some or all of the utilities in the rent to owner.

If the rent is not affordable because the family share would be more than 40% of the family's monthly adjusted income, the PHA will negotiate with the owner to reduce the rent to an affordable rent for the family. If the rent can be approved after negotiations with the owner, the PHA will continue processing the Request for Tenancy Approval and lease. If the revised rent involves a change in the provision of utilities, a new Request for Tenancy Approval must be submitted by the owner on the approval date and time listed on the original RTA with the Housing Specialist initials that negotiated the change.

If the owner does not agree on the rent to the owner after the PHA has tried and failed to negotiate a revised rent, the PHA will inform the family and owner that the lease is disapproved.

### **INFORMATION TO OWNERS**

In accordance with HUD requirements, the PHA will furnish prospective owners with the family's current address as shown in the PHA's records and, if known to the PHA, the name and address of the landlord at the family's current and prior address.

The PHA will make an exception to this requirement if the family's whereabouts must be protected due to domestic abuse or witness protection.

The PHA will inform owners that it is the responsibility of the landlord to determine the suitability of prospective tenants. Owners will be encouraged to screen applicants for rent payment history, payment of utility bills, eviction history, respecting the rights of other residents, damage to units, 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.

A statement of the PHA's policy on release of information to prospective landlords will be included in the briefing packet which is provided to the family. The PHA will not provide documented information regarding tenancy history.

### **CHANGE IN TOTAL TENANT PAYMENT (TTP) PRIOR TO HAP EFFECTIVE DATE**

When the family reports changes in factors that will affect the total family share prior to the effective date of the HAP contract at admission, the information will be verified, and the total family share will be recalculated. If the family does not report any change, the

PHA need not obtain new verifications before signing the HAP contract, even if verifications are more than 60 days old.

### **CONTRACT EXECUTION PROCESS**

The PHA prepares the Housing Assistance Contract and lease for execution. The family and the owner will execute the lease agreement, and the owner and the PHA will execute the HAP contract. Copies of the documents will be furnished to the parties who signed the respective documents. The PHA will retain a copy of all signed documents.

The PHA makes every effort to execute the HAP contract before the commencement of the lease term. The HAP contract may not be executed more than 60 days after commencement of the lease term and no payments will be made until the contract is executed.

The Director of Housing Services is authorized to execute a contract on behalf of the PHA.

Owners must provide the current address of their residence (not a Post Office box). If families lease properties owned by relatives, the owner's current address will be compared to the subsidized unit's address.

Owners must provide an Employer Identification Number or Social Security Number. The owner must provide a home telephone number and business number if applicable.

The unit must be licensed under the Westminster Rental Housing License Program and must supply all required MDE lead certifications

Unless their lease was effective prior to June 17, 1998, a family may not lease properties owned by a parent, child, grandparent, grandchild, sister or brother of any family member. The PHA may waive this restriction as a reasonable accommodation for a family member who is a person with a disability and the accommodation will allow access to the program which would not have been likely without the accommodation.

## CHAPTER 10 NATIONAL STANDARDS FOR PHYSICAL INSPECTIONS OF REAL ESTATE

### INTRODUCTION

HUD requires that all units occupied by families in the HCV Program meet HUD's **National Standards for Physical Inspection of Real Estate (NSPIRE)** and permits the PHA to establish additional requirements based on local regulations.

During any of the types of inspections a PHA conducts, PHA personnel may take photographs of anything deemed relevant to the inspection process and in determining whether the unit meets NSPIRE standards. This includes, but is not limited to, photos of NSPIRE deficiencies or violations. Photos can be an effective and efficient tool to document deficiencies that have been corrected. The inspector may request the landlord submit photos to verify corrections.

### INSPECTABLE AREAS

HUD defines three areas for conducting NSPIRE inspections. NSPIRE also provides for minimum, or affirmative, habitability requirements for each "area" (unit, inside, outside). The areas must meet these requirements for habitability.

#### Units

A unit (or "dwelling unit") of HUD housing refers to the interior components of an individual unit. Examples of components included in the interior of a unit may include the balcony, bathroom, call-for-aid (if applicable), carbon monoxide devices, ceiling, doors, electrical systems, enclosed patio, floors, HVAC (where individual units are provided), kitchen, lighting, outlets, smoke detectors, stairs, switches, walls, water heater, and windows.

#### Affirmative, habitability requirements

- The inside area must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the property.
- For the inside area, any outlet installed within 6 feet of a water source must be ground-fault circuit interrupter (GFCI) protected;
- The inside area must meet or exceed the carbon monoxide detection standards set by the Secretary of the U.S. Department of Housing and Urban Development;
- The inside area must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically;
- The inside area must have permanently mounted light fixtures in any kitchens and each bathroom;
- The inside area may not contain unvented space heaters that burn gas, oil, or kerosene.

## Inside

Inside of HUD assisted housing (or “inside areas”) refers to the common areas and building systems that can be generally found within the building interior and are not inside a unit. Examples of “inside” common areas may include basements, interior or attached garages, enclosed carports, restrooms, closets, utility rooms, mechanical rooms, community rooms, day care rooms, halls, corridors, stairs, shared kitchens, laundry rooms, offices, enclosed porches, enclosed patios, enclosed balconies, and trash collection areas. Examples of building systems include those components that provide domestic water such as pipes, electricity, elevators, emergency power, fire protection, HVAC, and sanitary services.

## Outside.

Outside of HUD housing (or “outside areas”) refers to the building site, building exterior components, and any building systems located outside of the building or unit. Examples of “outside” components may include fencing, retaining walls, grounds, lighting, mailboxes, project signs, parking lots, detached garage or carport, driveways, play areas and equipment, refuse disposal, roads, storm drainage, non-dwelling buildings, and walkways. Components found on the exterior of the building are also considered outside areas, and examples may include doors, attached porches, attached patios, balconies, carports, fire escapes, foundations, lighting, roofs, walls, and windows.

## TYPES OF INSPECTIONS

There are four types of inspections the PHA will perform:

- **Initial/Move-in Inspections**—Conducted upon receipt of Request for Tenancy Approval (RTA).
- **Annual Inspection**—The PHA will conduct inspections annually to confirm that the unit still meets **NSPIRE** standards. This inspection is usually conducted in conjunction with the family’s annual recertification.
- **Special/Complaint 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 inspected by a supervisor or other qualified individual to evaluate the work of the inspector(s) and to ensure that inspections are performed in compliance with **NSPIRE** Standards.

## Initial Inspection

The PHA will inspect the unit, determine whether the unit satisfies the **NSPIRE** standards, and notify the family and owner of the determination within 15 days after the family and the owner have submitted a Request for Tenancy Approval. The 15-day period is suspended for any period during which the unit is not available for inspection.

The initial inspection will be conducted to:

- Determine if the unit and property meet **NSPIRE** standards.
- Document the current condition of the unit as to assist in future evaluations whether the condition of the unit exceeds normal wear and tear.
- Determine rent-reasonableness.

### **Inspection Results and Reinspections**

If any **NSPIRE** Standards violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. Life-Threatening deficiencies must be corrected within 24 hours after such notice has been provided. All other non-life-threatening deficiencies, known as Severe and Moderate, must be corrected within 30 days (or a PHA-approved extension) after such notice has been provided.

The PHA will generally reinspect the unit within five business days of the date the owner notifies the PHA that the required corrections have been made. The owner will be allowed up to two reinspections for repair work to be completed. If the time period given by the inspector to correct the repairs has elapsed, or the maximum number of failed reinspections has occurred, the family must select another 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.

### **Appliances**

If the family is responsible for supplying the stove and/or refrigerator, the PHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other **NSPIRE** standards. The PHA will not execute the HAP contract until it has verified that the appliances have been installed and are working.

### **Annual Inspections**

Each unit under HAP contract will be inspected within 12 months of the last full **NSPIRE** inspection. The family must allow the PHA to inspect the unit at reasonable times and with reasonable notice. The PHA conducts an inspection in accordance with **NSPIRE** standards at least annually. The annual inspection is scheduled with the Landlord and Family between 120-90 days prior to the anniversary date of the lease and prior to the date inspected in the prior year. Inspections will be conducted during normal business hours. During a period of a national, state and/or locally declared health emergency, the City of Westminster Housing Authority may allow the owner to self certify that the unit meets **NSPIRE** standards. The PHA will subsequently inspect the unit as soon as practical after the declared health emergency has been lifted. If the family is unable to be present, they must reschedule the appointment so that the inspection is completed within 30 days. If the family does not contact the PHA to reschedule the inspection or if

the family misses two inspection appointments, the PHA will consider the family to have violated a Family Obligation and their assistance may be terminated in accordance with the termination procedures in this plan.

## **Results and Reinspections**

If during the inspection, **NSPIRE** standards deficiencies are identified, the unit fails inspection and the owner and family will be notified in writing. Life-Threatening deficiencies must be corrected within 24 hours after such notice has been provided. Non-life-threatening deficiencies, known as Severe and Moderate, must be corrected within 30 days (or a PHA-approved extension) after such notice has been provided. The notice also includes a warning of the potential for HAP abatement in the case of owner responsibility. Extensions will be granted in cases where the PHA 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 circumstances beyond the owner's control
- A repair cannot be completed because of weather conditions.
- A reasonable accommodation is needed because the family includes a person with disabilities.

## **Special/Complaint Inspections**

If at any time the family, owner, or a third party notifies the PHA that the unit does not meet **NSPIRE** standards, the PHA will conduct an inspection. If the reported condition is life-threatening, the PHA must inspect the unit within 24 hours of notification, and the owner would be required to repair it within 24 hours following confirmation and notification by the inspector that it is life-threatening. If the reported condition is not life-threatening, the PHA must inspect the unit within 15 days of notification.

During a special inspection, the PHA will inspect only the deficiencies that were reported. However, if the inspector notices additional deficiencies that would cause the unit to fail **NSPIRE** standards, the responsible party will be required to make the necessary repairs.

If the annual inspection date is within 120 days of a special inspection, and as long as all items are inspected that are included in an annual inspection, the special inspection will be categorized as an annual and all annual procedures will be followed.

## **Quality Control Inspections**

HUD requires a PHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that accurate and complete inspections are being conducted and that there is consistency in applying **NSPIRE** standards. Units

selected for quality control inspections will have been inspected in the preceding three months and will include:

- Each type of inspection (initial, annual, and special)
- Inspections completed by each inspector, if there are multiple inspectors
- Units from a cross-section of neighborhoods

### **ADDITIONAL LOCAL REQUIREMENTS**

The PHA may impose variations to the NSPIRE standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choices to families. HUD approval is required for variations to the NSPIRE standards. HUD approval is not required if the variations are clarifications of HUD's Affirmative, habitability requirements.

#### **Thermal Environment**

The heating system must be capable of maintaining a temperature of 68 degrees Fahrenheit, in all interior rooms used for living, between October 1 and May 15.

#### **Walls**

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

#### **Windows**

All window sashes must be in good condition, solid and intact, and fit properly in the window frame. Damaged or deteriorated sashes must be replaced.

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

Window screens must be in good condition.

#### **Doors**

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

All interior doors must have no holes, have all trim intact, and be openable without the use of a key. Exterior access-only locking mechanisms are prohibited.

#### **Floors**

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

All floors must be in a finished state (no plywood).

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

## **Sinks**

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

## **Toilets**

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

## **Security**

If window security bars or security screens are present on an emergency exit window, 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.

## **CONSEQUENCES IF OWNER IS RESPONSIBLE**

When it has been determined that a unit on the program fails to meet NSPIRE standards, and the owner did not complete the repairs in the specified time period, the housing assistance payment to the owner will be abated.

## **Abatement**

A Notice of Abatement will be sent to the owner, and the abatement will be effective from the day after the date of the failed inspection. The notice is generally for 30 days, depending on the nature of the repair(s) needed. The PHA will inspect abated units within three working days of the owner's notification that the work has been completed. If the owner makes repairs during the abatement period, payment will resume on the day the unit passes inspection. The PHA will advise owners of their responsibility to notify the tenant of when the reinspection will take place.

No retroactive payments will be made to the owner for the period of time the rent was abated and the unit did not comply with NSPIRE standards. The Notice of Abatement states that the tenant is not responsible for the PHA's portion of rent that is abated.

## **Extensions for Repairs**

The PHA may grant an extension in lieu of abatement in the following cases:

- There is an unavoidable delay in completing repairs due to difficulties in obtaining parts or contracting for services.
- The owner makes a good faith effort to make the repairs or has contracted for services to complete the repair and an unavoidable delay occurs.
- The repairs are expensive (such as exterior painting or roof repair) and the owner needs time to obtain the funds.
- The repairs must be delayed due to climate conditions.

The extension will be made for a period of time not to exceed 30 days, except for winter months when exterior work is required. At the end of that time, at the PHA's discretion, if the work is not completed or substantially completed, the PHA will begin the abatement/termination of assistance.

### **Termination of Contract**

If the owner is responsible for repairs and fails to correct all the deficiencies cited prior to the end of the abatement period, the owner will be sent a HAP Contract Proposed Termination Notice. Prior to the effective date of the termination, the abatement will remain in effect.

If repairs are completed before the effective termination date, the termination will be rescinded by the PHA if the tenant chooses to remain in the unit. Only one NSPIRE standards inspection will be conducted after the termination notice is issued.

### **DETERMINATION OF RESPONSIBILITY**

Certain NSPIRE standard's deficiencies are considered the responsibility of the family:

- 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 owner is responsible for all other NSPIRE standards deficiencies.

The owner is responsible for vermin infestation, unless it is determined to be caused by the family's living habits. If such infestation is serious and repeated, it may be considered a lease violation and the owner may evict for serious or repeated violation of the lease. The PHA may terminate the family's assistance on that basis. The inspector will make a determination of owner or family responsibility during the inspection. The owner or tenant may appeal this determination within 15 days of the inspection.

If the family is responsible but the owner carries out the repairs, the owner can bill the family for the cost of the repairs.

### **CONSEQUENCES IF FAMILY IS RESPONSIBLE**

If emergency or nonemergency NSPIRE standards deficiency(ies) is/are determined to be the responsibility of the family, the PHA will require the family make any repair(s) or corrections within 30 days. If the repair(s) or correction(s) are not made in this time period, the PHA will terminate assistance to the family, after providing an opportunity for an informal hearing. Any extensions in these cases must be approved by the Director. The owner's rent will not be abated for items that are the family's responsibility.

If the tenant is responsible and corrections are not made, the HAP contract will terminate when assistance is terminated.

## **Chapter 11 OWNER RENTS, RENT REASONABLENESS, AND PAYMENT STANDARDS**

### **RENT REASONABLENESS**

No HAP contract can be approved until the PHA 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.

The PHA will determine rent reasonableness in accordance with. It is the PHA's responsibility to ensure that the rents charged by owners are reasonable based upon unassisted comparable units in the rental market, using the criteria specified in 24 CFR 982.507(b).

This chapter explains the PHA's procedures for determination of rent-reasonableness, payments to owners, adjustments to the Payment Standards, and rent adjustments.

### **RENT TO OWNER IN THE HOUSING CHOICE VOUCHER PROGRAM**

The rent to owner is limited only by rent reasonableness. The PHA must demonstrate that the rent to the owner is reasonable in comparison to the rent for other comparable unassisted units.

The only other limitation on rent to the owner is the maximum rent standard at initial occupancy. At the time a family initially receives tenant-based assistance for occupancy of a dwelling unit, whether it is a new admission or a move to a different unit, if the gross rent for the unit exceeds the applicable Payment Standard for the family, the family share may not exceed 40 percent of the family's monthly adjusted income.

During the initial term of the lease, the owner may not raise the rent. After the initial term of the lease, the owner may request an increase at the time of the participant's recertification. The PHA may request the owner to provide information about the rent charged for other units on the premises if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises, the PHA will consider the size and length of tenancy in the other units. The PHA will determine whether the requested increase is reasonable within 10 days of receiving the request from the owner. Any approved rent increases will become effective on the first of the month following 60 days after the PHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

If the PHA finds that the requested rent increase is not reasonable, the owner must either reduce the requested increase or terminate the tenancy in accordance with the terms of the lease.

## **MAKING PAYMENTS TO OWNERS**

Once the HAP contract is executed the PHA begins processing payments to the landlord. A HAP Register will be used as a basis for monitoring the accuracy and timeliness of payments. Changes are made automatically to the HAP Register for the following month. Monthly checks will be deposited directly into the owner's bank account by the 5th business day of the month once the PHA has received the monies from HUD. Payment for leases entered into after the first of the month will be issued the following month in addition to the regular payment.

### **Excess Payments**

The total amount of rent paid by the tenant plus the PHA housing assistance payment to the owner may not be more than the rent to owner. The owner must return any excess payment to the PHA. Owners who do not return excess payments will be subject to penalties as outlined in the "Owner or Family Debts to the PHA" chapter of this Administrative Plan.

### **Late Payments to Owners**

It is a local business practice in City of Westminster for property managers and owners to charge tenants a reasonable late fee for the tenant portion of the rents not received by the owner or property manager by the due date, notwithstanding any grace period which is typically 5 days past the first of the month. Any late fees must be included and identified in the rental agreement and must comply with Maryland Landlord/Tenant Laws.

## **RENT REASONABLENESS DETERMINATIONS**

The PHA 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.

The PHA will not approve a lease until the PHA determines that the initial rent to owner is a reasonable rent. The PHA must re-determine 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 PHA must re-determine rent reasonableness if directed by HUD and based on a need identified by the PHA's auditing system. The PHA may elect to re-determine 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 re-determined by the PHA.

The owner will be advised that by accepting each monthly housing assistance payment the owner 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 PHA information on rents charged by the owner for other units on the premises or elsewhere. The data for other unassisted units will be gathered from newspapers,

realtors, professional associations, inquiries of owners, market surveys, and other available sources.

The PHA maintains and updates unit rent comparable studies in its commercial software database. Current data is based on recent lease signing within the last 2 years. The following items are included in the data used for rent reasonableness documentation:

- Size (number of bedrooms/square footage)
- Location
- Quality
- Amenities (bathrooms, dishwasher, air conditioning, etc.)
- Age of unit
- Unit Type
- Maintenance
- Utilities

### **Rent Reasonableness Methodology**

The PHA's software system is utilized to identify and use a comparable, first by the unit size and type, and then amenities. If there are no units available by the unit size and type for the largest bedroom sizes, any similar type of unit of a smaller bedroom size may be used. At least three comparable units are used, and the gross rents averaged to calculate the approvable comparable rent for the proposed unit.

### **PAYMENT STANDARDS FOR THE VOUCHER PROGRAM**

The Payment Standard is used to calculate the housing assistance payment for a family. In accordance with HUD regulation, and at the PHA's discretion, the Voucher Payment Standard amount is set by the PHA between 90 percent and 110 percent of the HUD published FMR. This is considered the basic range. The PHA reviews the appropriateness of the Payment Standard annually when the FMR is published. In determining whether a change is needed, the PHA will ensure that the Payment Standard is always within the range of 90 percent to 110 percent of the new FMR, unless an exception payment standard has been approved by HUD.

The PHA will establish a single voucher payment standard amount for each FMR area in the PHA jurisdiction. For each FMR area, the PHA will establish payment standard amounts for each "unit size". The PHA may have a higher payment standard within the PHA's jurisdiction if needed to expand housing opportunities outside areas of minority or poverty concentration, as long as the payment standard is within the 90-110 percent FMR range.

The PHA may approve a higher payment standard within the basic range, if required as a reasonable accommodation for a family that includes a person with disabilities.

## **ADJUSTMENTS TO PAYMENT STANDARDS**

Payment Standards may be adjusted, within HUD regulatory limitations, to increase Housing Assistance Payments in order to keep families' rents affordable. The PHA will not raise Payment Standards solely to make "high end" units available to Voucher holders. The PHA may use some or all of the measures below in making its determination whether an adjustment should be made to the Payment Standards.

### **Assisted Families' Rent Burdens**

The PHA will review its voucher Payment Standard amounts at least annually to determine whether more than 40% of families in a particular unit size are paying more than 30% of their annual adjusted income for rent.

If it is determined that particular unit sizes in the PHA's jurisdiction have Payment Standard amounts that are creating rent burdens for families, the PHA will modify its Payment Standards for those particular unit sizes.

The PHA will increase its Payment Standard within the basic range for those particular unit sizes to help reduce the percentage of annual income that participant families in the PHA's jurisdiction are paying.

### **Quality of Units Selected**

The PHA 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.

### **PHA Decision Point**

The PHA will review the average percent of income of families on the program. If more than 40% of families are paying more than 30% of monthly adjusted income, the PHA will determine whether there is a difference by voucher size, whether families are renting units larger than their voucher size, and whether families are renting units which meets or exceeds HUD's NSPIRE and any additional standards added by the PHA in the Administrative Plan.

If families are paying more than 30% of their income for rent due to the selection of larger bedroom size units or luxury units, the PHA may decline to increase the payment standard. If these are not the primary factors for families paying higher rents, the PHA will continue increasing the payment standard.

The PHA will also consider the HUD funding available to provide assistance to the families. If the funding is less than the amount needed to assist the PHA's current baseline number of units (297), the voucher payment standard amounts will be held to be between 90% - 100% of FMR to be able to assist more households on the program.

## **Rent to Owner Increases**

The PHA may review a sample of the units to determine how often owners are increasing rents and the average percent of increase by bedroom size.

## **Time to Locate Housing**

The PHA may consider the average time period for families to lease up under the Voucher program. If more than 30% of Voucher holders are unable to locate suitable housing within the term of the voucher and the PHA determines that this is primarily due to the rents in the jurisdiction being unaffordable for families the Payment Standard may be adjusted.

## **Lowering of the Payment Standard**

Lowering the FMR may require an adjustment of the Payment Standard. Additionally, statistical analysis may reveal that the Payment Standard should be lowered. In any case, the Payment Standard will not be set below 90 percent of the FMR without authorization from HUD.

## **Financial Feasibility**

Before increasing the Payment Standard, the PHA may review the budget to determine the impact projected subsidy increases would have on funding available for the program and number of families served.

For this purpose, the PHA will compare the number of families who could be served under a higher Payment Standard with the number assisted under current Payment Standards.

## **OWNER PAYMENT IN THE HOUSING CHOICE VOUCHER PROGRAM**

The owner is required to notify the PHA, in writing, at least 60 days before any change in the amount of rent to the owner is scheduled to go into effect. Any requested change in rent to the owner will be subject to rent reasonableness requirements.

Rent increases will be limited to one per year to coincide with the tenant's annual recertification at which time the reasonable rent will be determined during the annual inspection.

## **CHAPTER 12 RECERTIFICATIONS**

### **INTRODUCTION**

In accordance with HUD requirements, the PHA will reexamine the income and household composition of all families at least annually. Families will be provided accurate annual and interim rent adjustments. Recertifications and interim examinations will be processed in a manner that ensures families are given reasonable notice of rent increases. All annual activities will be coordinated in accordance with HUD regulations. It is a HUD requirement that families report all changes in household composition. This chapter defines the PHA's policy for conducting annual recertifications and coordinating annual activities. It also explains the interim reporting requirements for families, and the standards for timely reporting.

### **ANNUAL ACTIVITIES**

There are two activities the PHA must conduct on an annual basis. These activities will be coordinated whenever possible:

- Recertification of income and family composition
- **NSPIRE inspection**

The PHA produces a monthly listing of units under contract to ensure that timely reviews of housing quality and factors related to total tenant payment/family share can be made. Re-examination of the family's income and composition must be conducted at least annually.

### **ANNUAL RECERTIFICATION/REEXAMINATION**

Families are required to be recertified at least annually. The PHA 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.

### **Moves Between Reexaminations**

When families move to another dwelling unit, an annual recertification will be scheduled (unless a recertification has occurred in the last 60 days and the verifications for income, assets, and deductions are less than 120 days old, and the family's reported income, assets, and deductions are the same, the current verifications can be used for the move/annual recertification,) and the anniversary date will be changed. Income limits are not used as a test for continued eligibility at recertification.

## **Reexamination Notice to the Family**

The PHA will maintain a reexamination tracking system and the household will be notified by mail of the date and time for their interview at least 90 days in advance of the anniversary date. If requested as an accommodation by a person with a disability, the PHA will provide the notice in an accessible format. The PHA will also mail the notice to a third party, if requested as reasonable accommodation for a person with disabilities. These accommodations will be granted upon verification that they meet the need presented by the disability.

The PHA's procedure for conducting annual recertifications will be to schedule the date and time of appointments and mail a notification to the family.

## **Completion of Annual Recertification**

The PHA will have all recertifications for families completed before the anniversary date. This includes notifying the family of any changes in rent at least 30 days before the scheduled date of the change in family rent.

Persons with disabilities who are unable to come to the PHA's office will be granted an accommodation by conducting the recertification by mail, upon verification that the accommodation requested meets the need presented by the disability.

The PHA may conduct recertifications by mail during times of public health or other emergencies.

## **Collection of Information**

The PHA has established appropriate recertification procedures necessary to ensure that the income data provided by families is complete and accurate.

The PHA will require the family to complete an Affidavit for Rental Assistance Benefits Form prior to all recertification interviews. If the family fails to have this form completed at the time of the recertification interview, the Housing Specialist will cancel the interview and reschedule the appointment. This will be counted as a missed appointment.

## **Requirements to Attend**

All adult household members will be required to attend the recertification interview. Exceptions may be granted for adult full-time students attending college.

If the head of household is unable to attend the interview, the spouse or co-head may recertify for the family under special circumstances.

## **Failure to Respond to Notification to Recertify**

The family may call to request another appointment date when they receive their notice. The PHA may allow two rescheduled appointment dates. If the family does not appear for the recertification interview and has not rescheduled or made prior arrangements with the PHA, the PHA will reschedule a second appointment. If the family fails to appear for the second appointment, and has not rescheduled or made prior arrangements, the PHA may start termination proceedings.

Exceptions to these policies may be made by the Director if the family is able to document an emergency that prevented them from canceling or attending the appointment or if requested as a reasonable accommodation for a person with a disability.

## **Incomplete or Missing Information or Signatures**

If the family's annual recertification packet is incomplete the PHA caseworker will send a follow-up notice to the family advising them of the deadline for providing the missing information or signatures. If the family fails to meet that deadline the PHA Housing Specialist will send a notice of termination of their assistance. All notices of termination of the family's assistance will advise them of their right to an informal hearing regarding the termination.

## **Documents Required from the Family**

In the notification letter to the family, the PHA will include instructions for the family to bring the following:

- An Affidavit for Continued Rental Assistance completed by Head of Household and signed by all adult family members. Documentation of income for all family members including
- Documentation of all assets
- Documentation of any deductions/allowances
- Other: Copies of utility bills, credit card bills, rent receipt, telephone bills, cable bills, auto insurance premiums, etc.

Failure to bring required documents or submit them within **10 working days** after an appointment is considered a violation of HUD's Family Obligations **and cause for termination**.

## **Verification of Information**

The PHA will follow the verification procedures and guidelines described in this Plan. Verifications for reexaminations must be less than **120 days** old.

## **Tenant Rent Increases**

If tenant rent increases, a 30-day notice is mailed to the family prior to the scheduled effective date of the annual recertification.

If there has been a misrepresentation or a material omission by the family, or if the family causes a delay in the reexamination processing, there will be a retroactive increase in rent to the scheduled effective date of the annual recertification.

## **Tenant Rent Decreases**

If tenant rent decreases, it will be effective on the anniversary date.

If the family causes a delay so that the processing of the reexamination is not complete by the anniversary date, rent change will be effective on the first day of the month following completion of the reexamination processing by the PHA.

## **Increases in Income**

The PHA may conduct interim reexaminations when families have an increase in income. Families will be required to report all increases in income/assets within **10** working days of the increase.

If an increase is not reported in a timely manner, the increase in rent portion will be effective on the first of the month in which it should have gone into effect had it been reported on time. In this case, the family will not be entitled to 30 days' notice of the increase in rent portion. Any overpayment will be recovered from the tenant.

**The PHA will not conduct an interim reexamination if the increase in income results in an annual adjusted income of 10% or less.**

**The PHA will conduct an interim reexamination if the increase in income results in an annual adjusted income of more than 10%.**

## **Decreases in Income**

**Participants may report a decrease in income and other changes that would reduce the amount of tenant rent, such as an increase in allowances or deductions. The interim will be effective on the first day of the following month.**

## **De Minimis Errors**

If the PHA makes a calculation error at admission to the program or at an annual reexamination, an interim reexamination will be conducted, if necessary, to correct the error, but the family will not be charged retroactively. Families will be given decreases when applicable; retroactive to when the decrease for the change would have been effective if calculated correctly. Families will be given 30 days advance notice of any increase in rent due to correction of a PHA error.

## **REPORTING INTERIM CHANGES**

Program participants must report all changes in household composition to the PHA between annual reexaminations within 10 working days. This includes additions due to birth, adoption and court-awarded custody. The family must obtain PHA approval prior to all other additions to the household.

If any new family member is added, family income must include any income of the new family member. If a head of household marries while on the Housing Choice Voucher Program, the spouse must be added to the household and the spouse's income and assets will be included.

The family is also required to report, in writing, any change in student status for any household member 18 years or older.

The U.S. citizenship/eligible immigrant status of additional family members must be declared and verified as required at the first interim or regular recertification after moving into the unit.

## **OTHER INTERIM REPORTING ISSUES**

An interim reexamination does not affect the date of the annual recertification. A family at zero income will be given monthly verification forms to complete.

Any changes reported by participants other than those listed in this section will be noted in the file by the Housing Specialist but will not be processed between regularly scheduled annual recertifications.

## **INCOME CHANGES RESULTING FROM WELFARE PROGRAM REQUIREMENTS**

The PHA will not reduce the family share of rent for families whose welfare assistance is reduced due to a "specified welfare benefit reduction," which is a reduction in benefits by the welfare agency specifically because of:

- Fraud in connection with the welfare program, or
- Noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

However, the PHA will reduce the rent if the welfare assistance reduction is a result of:

- The expiration of a lifetime time limit on receiving benefits;
- A situation where the family has complied with welfare program requirements but cannot or has not obtained employment; or
- A situation where a family member has not complied with other welfare agency requirements.

Should the TANF grant be discontinued and completely closed the PHA will reduce the rent if the family requests an interim recertification.

## **Definition of Covered Family**

A household that receives benefits for welfare or public assistance from a State or public agency program which requires, as a condition of eligibility to receive assistance, the participation of a family member in an economic self-sufficiency program.

### **Definition of "Imputed Welfare Income"**

The amount of annual income not actually received by a family as a result of a specified welfare benefit reduction that is included in the family's income for purposes of determining rent.

The amount of imputed welfare income is determined by the PHA, based on written information supplied to the PHA by the welfare agency, including:

- The amount of the benefit reduction
- The term of the benefit reduction
- The reason for the reduction
- Subsequent changes in the term or amount of the benefit reduction

The family's annual income will include the imputed welfare income, as determined at the family's annual or interim reexamination, during the term of the welfare benefits reduction (as specified by the welfare agency).

The amount of imputed welfare income will be offset by the amount of additional income the family receives that commences after the sanction was imposed. When additional income from other sources is at least equal to the imputed welfare income, the imputed welfare income will be reduced to zero.

If the family was not an assisted resident when the welfare sanction began, imputed welfare income will not be included in annual income.

If the family claims the amount of imputed welfare income has been calculated incorrectly, the Director will review the calculation for accuracy. If the imputed welfare income amount is correct, the PHA will provide a written notice to the family that includes:

- A brief explanation of how the amount of imputed welfare income was determined; and
- A statement that the family may request an informal hearing if they do not agree with the PHA determination.

## **Verification before Denying a Request to Reduce Rent**

The PHA will obtain written verification from the welfare agency stating that the family's benefits have been reduced due to fraud or noncompliance with welfare agency economic self-sufficiency or work activities requirements before denying the family's request for rent reduction.

The PHA will rely on the welfare agency's written notice to the PHA regarding welfare sanctions.

### **Family Dispute of Amount of Imputed Welfare Income**

If the family disputes the amount of imputed income and the PHA denies the family's request to modify the amount, the PHA will provide the tenant with a notice of denial, which will include:

- An explanation for the PHA's determination of the amount of imputed welfare income; and
- A statement that the tenant may request an informal hearing

A statement that the grievance information received from the welfare agency cannot be disputed at the informal hearing, and the issue to be examined at the informal hearing will be the PHA's determination of the amount of imputed welfare income, not the welfare agency's determination to sanction the welfare benefits.

### **NOTIFICATION OF RESULTS OF RECERTIFICATIONS**

The HUD Form 50058 will be completed and transmitted as required by HUD.

The Notice of Rent Change is mailed to the owner and the tenant. Signatures are required by the property owners. If the family disagrees with the rent adjustment, they may request an informal hearing within 10 days of notification of the rent change.

### **TIMELY REPORTING OF CHANGES IN INCOME (AND ASSETS)**

Families are required to report interim changes to the PHA within 7 days of when the change occurred. Verification of the change must be provided within 14 days of the change. If the change is not reported within the required time period, or if the family fails to provide documentation or signatures, it will be considered untimely reporting.

### **Procedures when the Change is Reported in a Timely Manner**

The PHA will notify the family and the owner of any change in the Housing Assistance Payment to be effective according to the following guidelines:

- Increases in the Tenant Rent are effective on the first of the month following at least thirty days' notice.
- Decreases in the Tenant Rent are effective the first of the month following that in which the change is reported. However, no rent reductions will be processed until all the facts have been verified, even if a retroactive adjustment results.

The change may be implemented based on documentation provided by the family, pending third party written verification.

### **Procedures when the Change is Not Reported in a Timely Manner**

If the family does not report the change timely, the following guidelines will apply:

- Increase in Tenant Rent will be effective retroactive to the date it would have been effective had it been reported on a timely basis. The family will be liable for any overpaid housing assistance and may be required to sign a Repayment Agreement or make a lump sum payment.
- Decrease in Tenant Rent will be effective on the first of the month following the month that the change was reported.

### **Procedures when the Change is Not Processed by the PHA in a Timely Manner**

"Processed in a timely manner" means that the change goes into effect on the date it should when the family reports the change in a timely manner. If the change is not made effective on that date, the change is not processed by the PHA in a timely manner.

In this case, an increase will be effective after the required thirty days' notice prior to the first of the month after completion of processing by the PHA.

If the change resulted in a decrease, the overpayment by the family will be calculated retroactively to the date it should have been effective, and the family will be credited for the amount.

## CHAPTER 13 MOVES WITH CONTINUED ASSISTANCE AND PORTABILITY

### INTRODUCTION

HUD regulations permit families to move with continued assistance to another unit within the PHA's jurisdiction, or to a unit outside of the PHA's jurisdiction under portability procedures. The regulations also allow the PHA the discretion to develop policies which define any limitations or restrictions on moves. This chapter defines the procedures for moves, both within and outside of the PHA's jurisdiction, and the policies for restriction and limitations on moves.

### ALLOWABLE MOVES

A family may move to a new unit with continued assistance if:

- The assisted lease for the old unit has terminated because the PHA has terminated the HAP contract for owner breach, or the lease was terminated by mutual agreement of the owner and the family.
- The owner has given the family notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgment or other process allowing the owner to evict the family (unless assistance to the family will be terminated).
- The family has given proper notice of lease termination (and if the family has a right to terminate the lease on notice to owner).
- **The Violence Against Women Act of 2013 (VAWA) and Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022) provides special protection for victims of domestic violence, dating violence, sexual assault, and stalking who request to move to protect the health or safety of the family or family member.**

### PORTABILITY

**Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The first PHA is called the initial PHA. The second is called the receiving PHA.**

**The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA bills the initial PHA for the family's Housing Assistance Payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance out of its own program funds, and the initial PHA has no further relationship with the family.**

**Portability applies to families moving out of or into the PHA's jurisdiction within the United States and its territories. The City of Westminster Housing Authority's policy is**

that new voucher holders must first lease up for one year in our jurisdiction before requesting to port to another jurisdiction.

The PHA will restrict moves to higher cost rentals and higher cost areas due to insufficient funding as determined by the PHA. The PHA will deny permission to move if:

- The family has violated a family obligation;
- The family owes the PHA money;
- **The family is in the initial term of voucher participation;**
- The family has moved or been issued a voucher within the last twelve months.

## **OUTGOING PORTABILITY**

Within the limitations of the regulations and this policy, a participant family has the right to receive tenant-based voucher assistance to lease a unit outside the PHA's jurisdiction, anywhere in the United States, in the jurisdiction of a PHA with a tenant-based program. When a family requests to move outside of the PHA's jurisdiction, the request must specify the area to which the family wants to move.

The PHA will deny permission to move to a jurisdiction with higher payment standards if there is insufficient funding provided by HUD to pay the higher obligation unless the receiving PHA is willing to absorb the family into their own program.

If there is more than one PHA in the area in which the family has selected a unit, the tenant will choose the receiving PHA.

If a receiving PHA denies portability, the tenant is entitled to an appeal. The receiving PHA has up to **10** days to submit hearing determination to the initial PHA.

## **PROCEDURE FOR MOVES OR PORTS**

### **Issuance of Voucher**

Subject to the restriction listed above, if the family has not been recertified within the last **60** days, the PHA will issue the voucher to move after conducting the recertification as soon as the family requests the move or port.

If the family does not locate a new unit, they may remain in the current unit so long as the owner permits.

The annual recertification date will be changed to coincide with the new lease-up date unless it is more than one (1) year since the last recertification.

### **Notice Requirements**

Briefing sessions emphasize the family's responsibility to give the owner and the PHA proper written notice of any intent to move.

The family must give the owner the required number of days according to the lease and at least 30 days written notice of intent to vacate specified in the lease. The family must also give a copy to the PHA simultaneously.

## **Time of Contract Change**

A move within the same building or property, or between buildings owned by the same owner, will be processed like any other move except that there will be no overlapping assistance.

In a move outside the same building or property, assistance stops at the old unit at the end of the month in which the tenant ceased to occupy, unless proper notice was given to end a lease midmonth. Assistance will start on the new unit on the effective date of the lease and contract. Assistance payments may overlap for the month in which the family moves.

## **INCOMING PORTABILITY**

### **Absorption or Administration**

The PHA will accept a family with a valid voucher from another jurisdiction and administer or absorb the voucher. If administering, the family will be issued a "portable" voucher by the PHA. The term of the voucher will be extended an additional 30 days past the date of any initial PHA voucher. The family must submit a request for approval of tenancy for an eligible unit to the receiving PHA during the term of the receiving PHA voucher. The receiving PHA may grant extensions in accordance with its Administrative Plan. However, if the family decides not to lease-up in the PHA's jurisdiction, they must contact the initial PHA to request an extension.

The PHA may absorb all incoming portable families if there is funding available. When the PHA does not absorb the incoming voucher, it will administer the initial PHA's voucher and the receiving PHA's policies will prevail.

For admission to the program a family must be income eligible in the area where the family initially leases a unit with assistance under the program. The receiving PHA does not redetermine eligibility for a portable family that was already receiving assistance in the initial PHA Section 8 tenant-based program.

The PHA will issue a "portability voucher" according to its own Subsidy Standards. If the family has a change in family composition which would change the voucher size, the PHA will change to the proper size based on its own Subsidy Standards.

### **Income and Total Tenant Payment of Incoming Portables**

As a receiving PHA, the PHA will conduct a recertification interview but will only verify the information provided if the documents are missing or are over 120 days old, whichever is applicable, or if there has been a change in the family's circumstances.

If the PHA conducts a recertification of the family, it will not cause a delay in the issuance of a voucher.

If the family's income is such that a \$0 subsidy amount is determined prior to lease-up in the PHA's jurisdiction, the PHA will refuse to enter into a contract on behalf of the family at \$0 assistance.

### **Requests for Tenancy Approval**

A briefing will be mandatory for all portability families.

When the family submits a Request for Tenancy Approval, it will be processed using the PHA's policies. If the family does not submit a Request for Tenancy Approval or does not execute a lease, the initial PHA will be notified within thirty (30) days of the expiration of the voucher by the receiving PHA.

If the family leases up successfully, the PHA will notify the initial PHA within 10 working days, and the billing process will commence. The PHA will notify the initial PHA if the family fails to submit a Request for Tenancy Approval for an eligible unit within the term of the voucher.

If the PHA denies assistance to the family, the PHA will notify the initial PHA within 10 working days and the family will be offered a review or hearing. The PHA will notify the family of its responsibility to contact the initial PHA if the family wishes to move outside the PHA's jurisdiction under continued portability.

### **Regular Program Functions**

The PHA will perform all program functions applicable the tenant-based assistance program, such as:

- Annual reexaminations of family income and composition;
- Annual inspection of the unit; and
- Interim examinations when requested or deemed necessary by the PHA.

### **Terminations**

The PHA will notify the initial PHA in writing of any termination of assistance within 10 working days of the termination. If an informal hearing is required and requested by the family, the hearing will be conducted by the PHA, using the regular hearing procedures included in this Plan. A copy of the hearing decision will be furnished to the initial PHA.

The initial PHA will be responsible for collecting amounts owed by the family for claims paid and for monitoring repayment. If the initial PHA notifies the PHA that the family is in arrears or the family has refused to sign a payment agreement, the PHA will terminate assistance to the family.

## **Required Documents**

As a receiving PHA, the PHA will require the documents listed on the HUD Portability Billing Form from the initial PHA.

## **Initial Billing Deadline**

When the initial PHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must contact the receiving PHA to determine the status of the family. If the receiving PHA reports that the family is not yet under HAP contract, the initial PHA may refuse to accept a late billing submission. If the receiving PHA reports that the family is under HAP contract and the receiving PHA cannot absorb the family, the initial PHA must accept a late billing submission; however, it may report to HUD the receiving PHA's failure to comply with the deadline.

If the PHA has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail on the next business day. If the PHA reports that the family is not yet under HAP contract, the PHA 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 PHA will send the receiving PHA a written confirmation of its decision by mail.

The PHA will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

## **Monthly Billing Payments**

If the receiving PHA is administering the family's voucher, the initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be received by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of over leasing or funding shortfalls. The PHA must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

As a receiving PHA, the PHA will bill the initial PHA monthly for housing assistance payments. The billing cycle for other amounts, including administrative fees and special claims, will be monthly unless requested otherwise by the initial PHA.

The PHA will bill 100% of the Housing Assistance Payment, and the lesser of 80% of the initial PHA's ongoing administrative fee or 100% of the receiving PHA's ongoing administrative fee for each "portability" voucher leased as of the first day of the month.

The PHA will notify the initial PHA of changes in subsidy amounts and will expect the initial PHA to notify the PHA of changes in the administrative fee amount to be billed.

## CHAPTER 14 TERMINATION OF ASSISTANCE AND TENANCY

### INTRODUCTION

HUD regulations specify mandatory and optional grounds for which a PHA can deny or terminate a family's assistance, and the ways informal hearings and reviews 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 a PHA's mandatory and optional terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

- **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 PHA based on the family's behavior.
- **Approach to Termination of Assistance**—This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that the PHA may consider in lieu of termination, the criteria the PHA must use when deciding what action to take, and the steps the PHA must take when terminating a family's assistance.
- **Termination of Tenancy by the Owner**—This part describes the HUD policies that govern the owner's right to terminate an assisted tenancy.

### GROUNDINGS FOR TERMINATION OF ASSISTANCE

HUD requires the PHA to terminate assistance for certain actions and inactions of the family and when the family no longer requires assistance due to increases in family income. HUD permits the PHA to terminate assistance for certain other actions family members take or fail to take. In addition, a family may decide to withdraw from the program and terminate their HCV assistance at any time by notifying the PHA.

#### Family No Longer Requires Assistance

As a family's income increases, the amount of PHA subsidy goes down. If the amount of HCV assistance provided by the PHA drops to zero, the family's assistance automatically terminates 180 days after the last housing assistance payment.

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 PHA of the changed circumstances and request an interim reexamination before the expiration of the 180-day period.

#### Family Chooses to Terminate Assistance

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

The request to terminate assistance should be made in writing by the head of household, spouse, or cohead, if applicable. Before terminating the family's assistance, the PHA will follow the notice requirements.

### **Mandatory Termination of Assistance**

HUD requires the PHA to terminate assistance in the circumstances described below.

#### **Eviction**

The PHA **will** terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. Incidents of actual or threatened violence, dating violence, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

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. In such cases the PHA will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take alternative measures. The PHA may, on a case-by-case basis, choose not to terminate assistance.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used is whether or not the reason for the eviction was the fault of the tenant or guests.

#### **Failure to Provide Consent**

The PHA **will** terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a regular or interim reexamination.

#### **Failure to Document Citizenship**

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

For (3) above, such termination **will** be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated.

### **Failure to Provide Social Security Documentation**

The PHA must terminate assistance if a participant family fails to disclose the complete and accurate Social Security Numbers of each household member and the documentation necessary to verify each Social Security Number. However, if the family is otherwise eligible for continued program assistance, and the PHA determines that the family's failure to meet the Social Security Number disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the PHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the PHA determined the family to be noncompliant. Circumstances beyond a family's control include delayed processing of the Social Security Number application by the Social Security Administration, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose a Social Security Number by the deadline.

### **Methamphetamine Manufacture or Production**

The PHA **will** 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 Registered Sex Offenders**

Should a PHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the PHA **will** immediately terminate assistance for the household member. In this situation, the PHA **will** offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA **will** terminate assistance for the household.

### **Failure of Students to Meet Ongoing Eligibility Requirements**

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, is not residing with his/her parents in an HCV-assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the PHA must terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and PHA policies or must be given

the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

### **Mandatory Policies and Other Authorized Terminations**

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

- Any household member is currently engaged (i.e., previous 12 months) 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.
- Any household member engaged in 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.

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

### **Drug-Related and Violent Criminal Activity**

The following definitions are used for the PHA policies described below.

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

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

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

The PHA 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 PHA will consider all credible evidence, including but not limited to, any record of charges, 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.

## **Other Authorized Reasons for Termination of Assistance**

The PHA will terminate or deny a family's assistance if:

- The family has failed to comply with any family obligations under the program.
- Any family member has been evicted from federally assisted housing in the last five years.
- Any PHA has ever terminated assistance under the program for any member of the family.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs.
- The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
- The family has breached the terms of a Repayment Agreement with the PHA.
- A family member has engaged in or threatened violent or abusive behavior toward PHA personnel.

Abusive or violent behavior towards PHA 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.

### **Family Absence from the Unit**

The family may be absent from the unit for brief periods. However, the family may not be absent from the unit for a period of more than 30 consecutive calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

If the family is absent from the unit for more than 30 consecutive calendar days, the family's assistance will be terminated.

### **Insufficient Funding**

Prior to terminating any HAP contracts for insufficient funding, the PHA will inform the local HUD field office. The PHA will terminate the minimum number needed in order to reduce HAP costs to a level within the PHA's annual budget authority. If the PHA must terminate HAP contracts due to insufficient funding, the PHA will do so in the following order:

1. Families in the regular HCV Program who are not elderly families, disabled families, or families with children. The order of termination will be based on a first-in (HCV admission date), first-out basis.

2. Families in the regular HCV Program who are nonelderly, nondisabled single person families. The order of termination will be based on a first-in (HCV admission date), first-out basis.

3. Families in the regular HCV Program who are elderly families, disabled families, or families with children. The order of termination will be based on a first-in (HCV admission date), first-out basis.

4. Families comprising the required number of special purpose vouchers, including HUD-Veteran's Affairs Supportive Housing (HUD-VASH), Family Unification Program (FUP), Non-Elderly Disabled (NED), Mainstream, and Homeownership vouchers will be the last to be terminated.

### **APPROACH TO TERMINATION OF ASSISTANCE**

The PHA is required by HUD regulations to terminate a family's assistance for certain actions or inactions of the family. For other types of actions or inactions of the family, regulations give the PHA discretion to either terminate the family's assistance or to take another action. This part discusses the various actions the PHA may choose to take when it has discretion and outlines the criteria the PHA 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.

#### **Method of Termination**

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

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

### **ALTERNATIVES TO TERMINATION OF ASSISTANCE**

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

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 as requested by the PHA of the former family member's current address.

#### **Repayment of Family Debts**

If a family owes money to the PHA, as a condition of continued assistance, the PHA 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.

## **CRITERIA FOR DECIDING TO TERMINATE OR DENY ASSISTANCE**

The PHA 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**

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

- The seriousness of the case, especially with respect to how it would affect other residents' safety or property.
- The effects that termination of assistance may have on other members of the family who were not involved in the action or failure to act.
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or a victim of domestic violence, dating violence, or stalking.
- The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future.
- In the case of drug or alcohol abuse, the PHA will require the participant to submit evidence of the household member's current participation in or successful completion of a court recognized, supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.
- In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family.

While a record of arrest(s) will not be used as the basis for termination, an arrest may, however, trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity. As part of its investigation, the PHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PHA may also consider:

- Any statements made by witnesses or the participant not included in the police report.
- Whether criminal charges were filed.
- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal.
- Any other evidence relevant to determining whether or not the participant engaged in disqualifying activity.

## **Reasonable Accommodation**

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

## **TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

### **Violence Against Women Act (VAWA)**

#### **Protections Against Termination**

VAWA provides four specific protections against termination of HCV assistance for victims of domestic violence, dating violence, sexual assault, or stalking. (Note: The second, third, and fourth protections also apply to terminations of tenancy or occupancy by owners participating in the HCV Program, as do the limitations discussed under the next heading.)

First, VAWA provides that a PHA may not terminate assistance to a family that moves out of an assisted unit in violation of the lease, with or without prior notification to the PHA, if the move occurred to protect the health or safety of a family member 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 unit.

Second, it provides that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking may not be construed either as a serious or repeated lease violation by the victim or as good cause to terminate the assistance of the victim.

Third, it provides that criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking may not be construed as cause for terminating the assistance of a tenant if a member of the tenant's household, a guest, or another person under the tenant's control is the one engaging in the criminal activity and the tenant or affiliated individual or other individual is the actual or threatened victim of the domestic violence, dating violence, or stalking.

Fourth, it gives PHAs the authority to terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others without terminating assistance to, or otherwise penalizing, the victim of violence.

## Limitations on VAWA Protections

VAWA does not limit the authority of the PHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, sexual assault, or stalking so long as the PHA does not subject the victim to a more demanding standard than it applies to other program participants.

Likewise, VAWA does not limit the authority of a PHA to terminate the assistance of a victim of domestic violence, dating violence, sexual assault, or stalking if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the assisted property if the victim is not terminated from assistance HUD regulations define actual and imminent threat to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur

Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat".

In determining whether a participant who is a victim of domestic violence, dating violence, sexual assault, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PHA will consider the following, and any other relevant, factors:

- Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, or stalking
- Whether the threat is a physical danger beyond a speculative threat
- Whether the threat is likely to happen within a short period of time
- Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the tenant wishes to contest the PHA's determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the informal hearing.

## **Documentation of Abuse**

When a participant family is facing assistance termination because of the actions of a participant, household member, guest, or other person under the participant's control and a participant or immediate family member of the participant's family claims that she or he is the victim of such actions and that the actions are related to domestic violence, dating violence, sexual assault, or stalking, the PHA will request in writing that the individual submit documentation affirming that claim. The written request will include instructions on where, when, and to whom the documentation must be submitted. It will also state the consequences for failure to submit the documentation by the deadline.

The documentation will consist of a completed and signed form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. In lieu of the certification form, the PHA will accept documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical or other knowledgeable professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. The individual claiming victim status must submit the requested documentation within 14 business days after receipt of the PHA's written request or must request an extension within that time frame.

The PHA may, at its discretion, extend the deadline by 10 business days. If the individual provides the requested documentation within 14 business days, or any PHA approved extension, the PHA will reconsider its termination decision in light of the documentation.

If the individual does not provide the requested documentation within 14 business days, or any PHA-approved extension, the PHA will proceed with termination of the family's assistance in accordance with applicable law, program regulations, and the policies in this plan.

## **Terminating the Assistance of a Domestic Violence Perpetrator**

Although VAWA provides assistance termination protection for victims of domestic violence, it does not provide protection for perpetrators. VAWA gives the PHA the explicit authority to "terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others "without terminating assistance to "or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant". This authority is not dependent on a bifurcated lease or other eviction action by an owner against an individual family

member. Further, this authority supersedes any local, state, or other federal law to the contrary. However, if the PHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance. This means that the PHA must follow the same rules when terminating assistance to an individual as it would when terminating the assistance of an entire family.

In making its decision, the PHA will consider all credible evidence, including, but not limited to, a signed certification (HUD-5382) or other documentation of abuse submitted to the PHA by the victim in accordance with this section. The PHA will also consider the factors described in this chapter under Criteria for Deciding to Terminate Assistance. Upon such consideration, the PHA may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member. If the PHA does terminate the assistance of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this plan.

### **PHA Confidentiality Requirements**

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

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

### **TERMINATION NOTICE**

HUD regulations require PHAs to provide written notice of termination of assistance to a family only when the family is entitled to an informal hearing. However, since the family's HAP contract (form HUD-52641) and lease will also terminate when the family's assistance terminates it is a good business practice to provide written notification to both owner and family anytime assistance will be terminated, whether voluntarily or involuntarily. The owner/manager will only be given notice that the tenant is being sent a letter of termination with the effective date, and that the tenant has the right to appeal.

Whenever a family's assistance will be terminated, the PHA will send a written notice of termination to the family and to the owner. The PHA will also send a form HUD-5382 to the family with the termination notice. This HUD form is for a family member who wants to claim protection under VAWA and he/she will have to notify the PHA within 14 business days. The notice will state the date on which the termination will become effective. This date generally will be at least 30 calendar days following the date of the termination notice, but exceptions will be made whenever HUD rules, other PHA policies, or the circumstances surrounding the termination require. If a family vacates

the unit without informing the PHA, 30 days' notice will not be given. In these cases, the notice to terminate will be sent at the time the PHA 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 PHA. The PHA 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).

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

If a criminal record is the basis of a family's termination, the PHA must provide a copy of the record to the subject of the record and the tenant so that they have an opportunity to dispute the accuracy and relevance of the record.

### **HOW TERMINATION AFFECTS THE HAP CONTRACT AND LEASE**

When the family's assistance is terminated, the lease and HAP contract terminate automatically. The owner may offer the family a separate unassisted lease.

### **TERMINATION OF TENANCY BY THE OWNER**

Termination of an assisted tenancy is a matter between the owner and the family; the PHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy. Termination of tenancy for certain reasons will also result in termination of assistance. If a termination is not due to a serious or repeated violation of the lease, and if the PHA has no other grounds for termination of assistance, the PHA may issue a new voucher so that the family can move with continued assistance.

### **Grounds for Owner Termination of Tenancy**

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, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking and the victim is protection from eviction by VAWA. A serious lease violation includes failure to pay rent or other amounts due under the lease. However,

the PHA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

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

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

### **Criminal Activity or Alcohol Abuse**

The owner may terminate tenancy during the term of the lease 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:

- 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.
- Any drug-related criminal activity on or near the premises.

However, in the case of criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking, if the tenant or an affiliated individual is the victim, the criminal activity may not be construed as cause for terminating the victim's tenancy.

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 that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy 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.

### **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 the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. This is the case except in certain incidents where the criminal

activity directly relates to domestic violence, dating violence, sexual assault, or stalking, and the tenant or an affiliated individual is the victim or threatened victim of the domestic violence, dating violence, sexual assault, or stalking.

### **Other Good Cause**

During the initial lease term, the owner may not terminate the tenancy for “other good cause” unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises. After the initial lease term, other good cause for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision.
- The owner’s desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit.
- 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
- 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.

### **EVICITION**

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 court action. The owner must give the PHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the PHA a copy of any eviction notice.

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

## **DECIDING WHETHER TO TERMINATE TENANCY**

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, including:

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

The 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.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, sexual assault, or stalking is limited by VAWA and the conforming regulations in 24 CFR Part 5, Subpart L.

## CHAPTER 15 OWNER DISAPPROVAL, RESTRICTION, AND DEBTS OWED TO THE PHA

### INTRODUCTION

It is the policy of the PHA to recruit owners to participate in the voucher program. The PHA will provide owners with prompt and professional service in order to maintain an adequate supply of available housing throughout the jurisdiction of the PHA. The regulations define when the PHA must disallow an owner's participation in the program, and they provide the PHA discretion to disapprove or otherwise restrict the participation of owners in certain categories. This chapter describes the criteria for owner disapproval, and the various penalties for owner violations.

This chapter also describes the PHA's policies for the recovery of monies that have been overpaid to owners. It describes the methods that will be utilized for collection of monies and the guidelines for different types of debts.

### DISAPPROVAL OF OWNER

The owner does not have a right to participate in the program. For purposes of this section, "owner" includes a principal or other interested party.

The PHA may disapprove the owner for the following reasons:

- HUD or another agency directly related has informed the PHA that the owner has been disbarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.
- HUD has informed the PHA that the Federal government has instituted an administrative or judicial action against the owner for violation of the Fair Housing Act or other Federal equal opportunity requirements and such action is pending.
- HUD has informed the PHA that a court or administrative agency has determined that the owner has violated the Fair Housing Act or other Federal equal opportunity requirements.
- Unless their lease was effective prior to June 17, 1998, the owner may not be a parent, child, grandparent, grandchild, sister or brother of any family member. The PHA may waive this restriction as a reasonable accommodation for a family member who is a person with a disability. Note: In cases where the owner and tenant bear the same last name, the PHA may, at its discretion, require the family and or owner to certify whether they are related to each other in any way.
- The owner has committed fraud, bribery or any other corrupt act in connection with any Federal housing program.
- The owner has a history or practice of non-compliance with the **NSPIRE Standards** 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 not paid State or local real estate taxes, fines or assessments.
- The owner has failed to comply with regulations, the mortgage or note, or the regulatory agreement for projects with mortgages insured by HUD or loans made by HUD.
- The owner has a history or practice of failing to terminate tenancy of units assisted under Section 8 or any other federally assisted housing program for activity by the tenant, any member of the household, a guest or another person under the control of any member of the household that:
  1. Threatens the right to peaceful enjoyment of the premises by other residents;
  2. Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing; or
  3. 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.

### **OWNER RESTRICTIONS AND PENALTIES**

If an owner has committed fraud or abuse or is guilty of frequent or serious contract violations, the PHA will restrict the owner from future participation in the program for a period of time commensurate with the seriousness of the offense. The PHA may also terminate some or all contracts with the owner.

Before imposing any penalty against an owner, the PHA will review all relevant factors pertaining to the case and will consider such factors as the owner's record of compliance and the number of violations.

### **Change in Ownership**

A change in ownership does not require execution of a new contract and lease. The PHA may approve the assignment of the HAP contract at the old owner's request. The PHA may approve the assignment since they are a party to the contract. The PHA may deny approval of assignment of the contract for any of the reasons listed above in this chapter.

The PHA will process a change of ownership only upon receipt of a completed Change In Ownership form and accompanying documentation, including the escrow statement or other document showing the transfer of title, recorded deed, and the employee identification number or social security number of the new owner.

### **OWNER DEBTS TO THE PHA**

It is the PHA's policy to meet the informational needs of owners and to communicate the program rules to avoid owner debts. Before a debt is assessed against an owner, the file must contain documentation to support the PHA's claim that the debt is owed. The file must further contain written documentation of the method of calculation in a clear format for review by the owner or other interested parties.

If owners owe money to the PHA, the PHA will make every effort to collect it. If the PHA determines that the owner has retained housing assistance or has claimed payments the owner is not entitled to, the PHA may reclaim the amounts from future housing assistance or claim payments owed the owner for any units under contract.

If future housing assistance or claim payments are insufficient to reclaim the amounts owed, the PHA will require the owner to pay the amount in full within thirty (30) days. The PHA will use a variety of collection tools to recover debts including, but not limited to:

- Requests for lump sum payments
- Civil suits
- Abatements
- Reductions in HAP to owner

### **WRITING OFF DEBTS**

Debts will be written off if:

- The debtor's whereabouts are unknown, and the debt is more than ten years old;  
or
- A determination is made that the debtor is judgment proof; or
- The debtor is deceased; or
- The debtor is confined to an institution indefinitely.

## **CHAPTER 16 PROGRAM INTEGRITY**

### **INTRODUCTION**

The PHA is committed to ensuring that subsidy funds made available to the PHA are spent in accordance with HUD requirements. This chapter covers HUD and PHA 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. Lastly, this chapter describes the PHA's policies and methods for the recovery of monies that have been overpaid for families.

### **PREVENTING ERRORS AND PROGRAM ABUSE**

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and detecting program abuse. PHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

- Provide applicants and participants with form HUD-52675, “Debts Owed to PHAs and Terminations”
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file.

To ensure that the PHA administers its HCV program according to the highest ethical and legal standards, the PHA will

- use the HUD required Enterprise Income Verification (EIV) system in its entirety to prevent errors and detect program
- abuse discuss program compliance and integrity issues during the voucher briefing
- provide each applicant and participant with a copy of “Is Fraud Worth It?” (form HUD-1141- OIG), which explains the types of actions a family must avoid and the penalties for program abuse
- provide each applicant and participant with a copy of “What You Should Know about EIV”, a guide to the Enterprise Income Verification (EIV) system published by HUD In addition, PHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file
- place a warning statement about the penalties for fraud on key PHA forms and form letters that request information from a family or owner
- require PHA staff to review and explain the contents of all HUD- and PHA-required forms prior to requesting family member signatures
- explain any changes in HUD regulations or PHA policy that affect program participants during Voucher Briefing

## **DETECTING ERRORS AND PROGRAM ABUSE**

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 constitutes a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

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

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

The PHA will 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.

The PHA will routinely use HUD and other non-HUD sources of up-front income verification. 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 PHA will compare family-reported income and expenditures to detect possible unreported income.

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

The PHA 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 PHA's error detection and abuse prevention efforts.

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

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

## **INVESTIGATING ERRORS AND PROGRAM ABUSE**

The PHA 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 PHA 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 PHA will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

### **Consent to Release of Information**

The PHA may investigate possible instances of error or abuse using all available PHA and public records. If necessary, the PHA will require HCV families to sign consent forms for the release of additional information. The PHA must deny admission to the

program for an applicant, or terminate program assistance for a participant, if any member of the family fails to sign and submit consent forms for obtaining information.

### **Analysis and Findings**

The PHA will base its evaluation on a preponderance of the evidence collected during its investigation. For each investigation, the PHA will determine

- whether an error or program abuse has occurred
- whether any amount of money is owed BRHP
- what corrective measures or penalties will be assessed

### **Consideration of Remedies**

In the case of family-caused errors or program abuse, the PHA will take into consideration

- the seriousness of the offense and the extent of participation or culpability of individual family members
- any special circumstances surrounding the case
- any mitigating circumstances related to the disability of a family member
- the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, the PHA will take into consideration

- the seriousness of the offense
- the length of time since the violation has occurred
- the effects of a particular remedy on family members who were not involved in the offense

### **Notice and Appeals**

The PHA 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

- a description of the error or program abuse
- the basis on which the PHA determined the error or program abuses
- the remedies to be employed, and
- the family's right to appeal the results through the informal review or hearing process, if applicable.

## REPAYMENT AGREEMENT FOR FAMILIES

The term Repayment Agreement refers to a formal written document signed by a tenant in which a tenant acknowledges a debt of a specific amount and agrees to repay the amount due at specific time periods. Before executing a Repayment Agreement with a family, the PHA will allow the family to make a down payment on the total amount owed.

The City of Westminster Housing Authority has established the following thresholds for repayment of debts:

- Amounts under \$1,000 must be repaid within 12 months.
- Amounts between \$1,000 and \$3,000 must be repaid within 24 months.
- Amounts between \$3,000 and the federal or state threshold for criminal prosecution must be repaid within 36 months.

The maximum term of a repayment agreement should not exceed 36 months. In any case, the minimum monthly payment is \$50.00.

A Repayment Agreement between the PHA and a family must be signed and dated by the PHA and by the head of household and spouse/cohead (if applicable).

The PHA will prescribe the terms of the Repayment Agreement, including determining whether to enter into a Repayment Agreement with the family based on the circumstances surrounding the debt to the PHA.

The PHA generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family or if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

### Late Payments

Payment will be considered late if the payment is not received by the last working day of the month. Late payments are considered a breach of the Repayment Agreement. If the family's Repayment Agreement is in arrears, and the family has not contacted or made arrangements with the PHA to renegotiate the terms of the agreement if there is a verifiable hardship or the household income has decreased, the PHA will terminate housing assistance after three missed payments in a 12-month period.

### Program Fraud

If a family owes an amount because of program fraud that equals or exceeds \$5,000, the case will be referred to the State Attorney and/or the HUD Inspector General offices if the amount equals or exceeds \$10,000.00. When appropriate, the PHA will refer the case for criminal prosecution.

## **GUIDELINES FOR REPAYMENT AGREEMENTS**

A family will not be allowed to port to another jurisdiction while in a Repayment Agreement.

No move will be approved until the debt is paid in full unless the move is the result of one of the following causes and the Repayment Agreement is current:

- Family size exceeds the maximum occupancy standards.
- The HAP contract is terminated due to owner noncompliance or opt-out.
- A natural disaster.
- An exception is made by the Director of Housing Services

Payments will be accepted in the form of cash, money order, or bank check made out to the City of Westminster Department of Housing Services.

## CHAPTER 17 COMPLAINTS AND APPEALS

### INTRODUCTION

The informal hearing requirements defined in HUD regulation are applicable to participating families who disagree with an action, decision, or inaction of the PHA. This chapter describes the policies, procedures and standards to be used when families disagree with a PHA decision. The procedures and requirements are explained for preference denial meetings, informal reviews and hearings. It is the policy of the PHA to ensure that all families have the benefit of all protections due to them under the law.

### COMPLAINTS TO THE PHA

The PHA will respond promptly to complaints from families, owners, employees, and members of the public. All complaints will be documented. The PHA does not require that complaints other than **NSPIRE** violations be put in writing. **NSPIRE** complaints may be reported by telephone. The PHA hearing procedures will be provided to families in the briefing packet.

### PREFERENCE DENIALS

If the PHA denies a preference to an applicant, and the applicant disagrees with the decision, the PHA will offer the applicant an informal meeting. This is different from an informal review or hearing. The meeting is limited only to the circumstances pertaining to the preference denial.

When the PHA denies a preference to an applicant, the family will be notified in writing of the specific reason for the denial and offered the opportunity for a meeting with PHA staff to discuss the reasons for the denial and to dispute the PHA's decision. The person who will conduct the meeting will be the Director of Housing Services.

### INFORMAL REVIEW PROCEDURES FOR APPLICANTS

Informal reviews are provided for applicants who are denied assistance before the effective date of the HAP contract. The exception is that when an applicant is denied assistance for citizenship or eligible immigrant status, the applicant is entitled to an informal hearing.

When the PHA determines that an applicant is ineligible for the program, the family must be notified of their ineligibility in writing. The notice must contain:

- The reason(s) they are ineligible;
- The procedure for requesting a review if the applicant does not agree with the decision; and
- The time limit for requesting a review.

When denying admission for criminal activity as shown by a criminal record, the PHA will provide the subject of the record and the applicant with the criminal record upon which the decision to deny was based.

The PHA will provide applicants with the opportunity for an informal review of decisions denying:

- Qualification for preference;
- Issuance of a voucher
- Participation in the program
- Assistance under portability procedures

Informal reviews are not required for established policies and procedures and PHA determinations such as:

- Discretionary administrative determinations by the PHA
- General policy issues or class grievances
- A determination of the family unit size under the PHA subsidy standards
- Refusal to extend or suspend a voucher
- A PHA's determination not to grant approval of the tenancy
- Determination that unit is not in compliance with NSPIRE
- Determination that unit is not in compliance with local code due to family size or composition

### **Procedure for Review**

A request for an informal review must be received in writing by the close of the business day, no later than ten (10) working days from the date of the PHA's notification of denial of assistance. The informal review will be scheduled within ten (10) working days from the date the request is received and the applicant/tenant will be given (10) working days' notice of the appointment date and time.

The applicant will be given the option of presenting oral or written objections to the decision. Both the PHA and the family may present evidence and witnesses. The family may use an attorney or other representative to assist them at their own expense.

The evidence is requested in advance of the hearing, no later than 2 days prior to the review. Notice of the review findings will be provided in writing to the applicant within ten working days after the review. It shall include the decision of the review officer, and an explanation of the reasons for the decision.

All requests for a review, supporting documentation, and a copy of the final decision will be retained in the family's file.

### **INFORMAL HEARING PROCEDURES**

When the PHA makes a decision regarding the eligibility and/or the amount of assistance, applicants and participants must be notified in writing. The PHA will give the family prompt notice of such determinations which will include:

- The proposed action or decision of the PHA;

- The date the proposed action or decision will take place;
- The family's right to an explanation of the basis for the PHA's decision;
- The procedures for requesting a hearing if the family disputes the action or decision;
- The time limit for requesting the hearing.

When terminating assistance for criminal activity as shown by a criminal record, the PHA will provide the subject of the record and the tenant/participant with the case number and date of the criminal record upon which the decision to terminate was based.

The PHA must provide participants with the opportunity for an informal hearing for decisions related to any of the following PHA determinations:

- Determination of the family's annual or adjusted income and the computation of the housing assistance payment
- Appropriate utility allowance used from schedule
- Family unit size determination under PHA subsidy standards
- Determination to terminate assistance for any reason

The PHA must always provide the opportunity for an informal hearing before termination of assistance. If no request is received by the deadline, no appeal hearing will be scheduled, and the assistance will terminate.

Informal hearings are not required for established policies and procedures and PHA determinations such as:

- Discretionary administrative determinations by the PHA;
- General policy issues or class grievances;
- Establishment of the PHA schedule of utility allowances for families in the program;
- A PHA determination not to approve an extension or suspension of a voucher term;
- A PHA determination not to approve a unit or lease;
- A PHA determination that an assisted unit is not in compliance with **NSPIRE** (PHA must provide hearing for family breach of **NSPIRE standards** because that is a family obligation determination);
- A PHA determination that the unit is not in accordance **with local code** because of the family size; or
- A PHA determination to exercise or not exercise any right or remedy against the owner under a HAP contract.

## **Notification of Hearing**

It is the PHA's objective to resolve disputes at the lowest level possible, and to make every effort to avoid the most severe remedies. However, if this is not possible, the PHA will ensure that applicants and participants will receive all of the protections and rights afforded by the law and the regulations.

When the PHA receives a request for an informal hearing, a hearing shall be scheduled within 10 working days. The notification of hearing will contain:

- The date and time of the hearing;
- The location where the hearing will be held;
- A copy of the Informal Hearing procedures.

## **The PHA's Hearing Procedures**

After a hearing date is scheduled, the family may request to reschedule only upon showing "good cause," which is defined as an unavoidable conflict that seriously affects the health, safety or welfare of the family and they provide documentation of such a good cause. If the family does not appear within 15 minutes of the scheduled hearing time and has not called the PHA office, the right to a hearing is considered waived and the termination will stand.

Families have the right to:

- Present written or oral objections to the PHA's determination;
- Examine the documents in the file that are the basis for the PHA's action, and all documents submitted to the Hearing Officer;
- Copy any relevant documents at their expense;
- Present any information or witnesses pertinent to the issue of the hearing;
- Request that PHA staff be available or present at the hearing to answer questions pertinent to the case; and
- Be represented by legal counsel, advocate, or other designated representative at their own expense

If the family requests copies of documents relevant to the hearing, the PHA will make the copies for the family at the family's expense. There will be no charge of \$0.25 per page. In no case will the family be allowed to remove the file from the PHA's office.

In addition to other rights contained in this Chapter, the PHA has a right to:

- Present evidence and any information pertinent to the issue of the hearing;
- Be notified if the family intends to be represented by legal counsel, advocate, or another party;
- Examine and copy any documents to be used by the family prior to the hearing;
- Have its attorney present; and
- Have staff persons and other witnesses familiar with the case present.

The informal hearing shall be conducted by the Hearing Officer appointed by the PHA who is neither the person who made or approved the decision, nor a subordinate of that person.

The hearing shall concern only the issues for which the family has received the opportunity for a hearing. Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

No documents may be presented which have not been provided to the other party before the hearing if requested by the other party. "Documents" include records and regulations.

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 the PHA shall take effect and another hearing will not be granted.

The Hearing Officer will determine whether the action, inaction or decision of the PHA is legal in accordance with HUD regulations and this Administrative Plan based upon the evidence and testimony provided at the hearing. Factual determinations relating to the individual circumstances of the family will be based on a preponderance of the evidence presented at the hearing.

A notice of the hearing findings shall be provided in writing to the PHA and the family within ten working days and shall include:

- A clear summary of the decision and reasons for the decision;
- If the decision involves money owed, the amount owed; and
- The date the decision goes into effect.

The PHA is not bound by hearing decisions:

- Which concern matters in which the PHA is not required to provide an opportunity for a hearing;
- Which conflict with or contradict to HUD regulations or requirements;
- Which conflict with or contradict Federal, State or local laws; or
- Which exceeds the authority of the person conducting the hearing.

The PHA shall send a letter to the participant if it determines the PHA is not bound by the Hearing Officer's determination within ten working days. The letter shall include the PHA's reasons for the decision.

All requests for a hearing, supporting documentation, and a copy of the final decision will be retained in the family's file. These hearings may be recorded, and a copy of the recording will be maintained in the tenant file. If the tenant/applicant requests a copy of the recording, it must be requested in writing and will be supplied within 7 days at the family's expense.

## **HEARING AND APPEAL PROVISIONS FOR "RESTRICTIONS ON ASSISTANCE TO NON-CITIZENS"**

Assistance to the family may not be delayed, denied or terminated on the basis of immigration status at any time prior to the receipt of the decision on the INS appeal.

Assistance to a family may not be terminated or denied while the PHA hearing is pending but assistance to an applicant may be delayed pending the PHA hearing.

### **INS Determination of Ineligibility**

If a family member claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, the PHA notifies the applicant or participant within ten days of their right to appeal to the INS within thirty days or to request an informal hearing with the PHA either in lieu of or subsequent to the INS appeal.

If the family appeals to the INS, they must give the PHA a copy of the appeal and proof of mailing or the PHA may proceed to deny or terminate. The time period to request an appeal may be extended by the PHA for good cause.

The request for a PHA hearing must be made within fourteen days of receipt of the notice offering the hearing or, if an appeal was made to the INS, within fourteen days of receipt of that notice.

After receipt of a request for an informal hearing, the hearing is conducted as described in this chapter for both applicants and participants. If the hearing officer decides that the individual is not eligible, and there are no other eligible family members, the PHA will:

- Deny the applicant family;
- Defer termination if the family is a participant and qualifies for deferral; or
- Terminate the participant if the family does not qualify for deferral.

If there are eligible members in the family, the PHA will offer to prorate assistance or give the family the option to remove the ineligible members.

Regarding all other complaints related to eligible citizen/immigrant status:

- If any family member fails to provide documentation or certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide, the family will be denied or terminated for failure to provide.
- Participants whose termination is carried out after temporary deferral may not request a hearing since they had an opportunity for a hearing prior to the termination.
- Participants whose assistance is pro-rated (either based on their statement that some members are ineligible or due to failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing based on the right to a hearing regarding determinations of tenant rent and Total Tenant Payment.

- Families denied or terminated for fraud in connection with the non-citizens rule are entitled to a review or hearing in the same way as terminations for any other type of fraud.

### **MITIGATING CIRCUMSTANCES FOR APPLICANTS/PARTICIPANTS WITH DISABILITIES**

When applicants are denied placement on the waiting list, or the PHA is terminating assistance, the family will be informed that presence of a disability may be considered as a mitigating circumstance during the informal review process.

Examples of mitigating circumstances are: (a) A person with a cognitive disorder may not have understood the requirement to report increases in income; (b) A person may not understand the need to make regular repayments on a promissory note; (c) Minor criminal records for public drunkenness may be due to medication; or (d) Prior incarcerations for being disorderly may be emotional disorder.

## CHAPTER 18 SPECIAL HOUSING TYPES

### INTRODUCTION

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

### Verification of Need for Reasonable Accommodation

Acceptable documentation as verification of the need for reasonable accommodation would be a letter to the PHA describing how the special housing type requested provides the accommodation of which the person is in need. The request and documentation will be reviewed by the Director and a written response stating approval or disapproval will be sent to the applicant/participant within ten (10) days of receipt of the request.

### SINGLE ROOM OCCUPANCY (SRO)

A single person may reside in an SRO housing unit. The PHA will use a separate lease and housing assistance payment contract for each assisted person residing in a SRO.

The PHA SRO payment standard is 75 percent of the zero bedroom payment standard schedule. For a person residing in an exception area the payment standard is 75 percent of the HUD approved zero bedroom exception payment standard amount. While an assisted person resides in SRO housing, the SRO payment standard must be used to calculate the housing assistance payment.

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

The PHA will ensure that all SRO units approved for the program are in compliance with all of the **NSPIRE standards** for SROs as regulated in 24 CFR 982.605.

### CONGREGATE HOUSING

An elderly person or a person with disabilities may reside in a congregate housing unit.

The PHA may approve a family member or live-in aide to reside with the elderly person or person with disabilities. The PHA will 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.

## **Congregate Housing Lease and HAP Contract**

For congregate housing there will be a separate lease and HAP contract for each assisted family.

Unless there is a live-in aide, the payment standard for a family that resides in a congregate housing unit is the zero-bedroom payment standard on the PHA payment standard schedule.

However, if there are two or more rooms in the unit (not including kitchen or sanitary facilities), the payment standard for a family that resides in a congregate housing unit is the one-bedroom payment standard amount.

If there is a live-in aide, the live-in aide will be counted in determining the family unit size.

## **NATIONAL STANDARD FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)**

The PHA will ensure that all congregate housing units approved for the program are in compliance with all of the NSPIRE Standards for congregate housing.

## **GROUP HOMES**

A group home must be licensed, certified, or otherwise approved in writing by the State, or the State's licensing department.

An elderly person or a person with disabilities may reside in a State-approved group home. If approved by the PHA, a live-in aide may reside with a person with disabilities.

The PHA 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. Except for a live-in aide, all residents of a group home must be elderly persons or persons with disabilities.

The PHA will not approve assistance for a person to live in a group home if file documentation indicates that the person is in need of continual medical or nursing care.

No more than twelve persons may reside in a group home. This limit covers all persons who reside in the unit, including assisted and unassisted residents and any live-in aide.

## **Group Home Lease and HAP Contract**

There will be a separate HAP contract and lease for each assisted person living in a group home. For a group home, the term "pro-rata portion" means that which is derived by dividing the number of persons in the assisted household by the total number of residents (assisted and unassisted) residing in the group home.

The number of persons in the assisted household equals one assisted person plus any PHA-approved live-in aide.

## **Group Home Rent and HAP Contract**

The rent to owner for an assisted person may not exceed the pro-rata portion of the reasonable rent for the group home.

The reasonable rent for a group home is determined in accordance with 982.503. In determining reasonable rent, the PHA will consider whether sanitary facilities and facilities for food preparation and service are common facilities or private.

## **Maximum Subsidy**

Unless there is a live-in aide, the family unit size is one bedroom. If there is a live-in aide, the live-in aide will be counted in determining the family unit size.

The payment standard for a person who resides in a group home is the lower of the payment standard for the family unit size or the pro-rata portion of the payment standard amount on the PHA payment standard schedule for the group home size.

## **Utility Allowance**

The utility allowance for each assisted person residing in a group home is the pro-rata portion of the utility allowance for the group home unit size.

## **NATIONAL STANDARD FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)**

The PHA will ensure that all group home units approved for the program are in compliance with all of the NSPIRE Standards for group homes.

## **SHARED HOUSING**

### **Occupancy**

An assisted family may reside in shared housing. In shared housing, an assisted family may share a unit with another resident or residents of a unit. The unit may be a house or an apartment.

The PHA may approve a live-in aide to reside with a family in order to care for a person with a disability. The PHA 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.

Other people who are assisted or not assisted under the tenant-based program may reside in a shared housing unit. The owner of a shared housing unit may reside in the unit.

A resident owner may enter into a HAP contract with the PHA. However, housing assistance may not be paid on behalf of an owner. The PHA will not approve assistance for a person or family that is related by blood or marriage to a resident owner.

There will be a separate housing assistance payment contract and lease for each assisted family residing in a shared housing unit.

### **Rent and HAP Contract**

For shared housing, the term "pro-rata portion" means the ratio derived by dividing the number of bedrooms in the private space available for occupancy by a family by the total number of bedrooms in the unit. For example, for a family entitled to occupy three bedrooms in a five bedroom unit, the ratio would be 3/5.

The rent to owner for the family may not exceed the pro-rata portion of the reasonable rent for the shared housing dwelling unit. The reasonable rent must be in accordance with the guidelines set in the "Owner Rents, Rent Reasonableness, and Payment Standards" chapter.

### **Maximum Subsidy**

For a family that resides in a shared housing unit the payment standard is the lower of the payment standard amount on the PHA payment standard schedule for the family unit size or the pro-rata portion of the payment standard amount on the PHA payment standard for the shared housing unit size.

If the PHA approves a live-in aide, the live-in aide will be counted in determining the family unit size.

### **Utility Allowance**

The utility allowance for an assisted family living in shared housing is the pro-rata portion of the utility allowance for the shared housing unit.

## **NATIONAL STANDARD FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)**

The PHA will ensure that all shared housing units approved for the program are in compliance with all of the NSPIRE for shared housing as regulated in 24 CFR 982.618.

### **MANUFACTURED HOMES**

The PHA will permit a family to lease a manufactured home and space with assistance under the program. The PHA will not provide assistance for a family that owns the manufactured home and leases only the space.

The PHA may approve a live-in aide to reside with a family to care for a person with disabilities. The PHA will approve a live-in aide if needed as a reasonable accommodation so that the program is accessible to and usable by persons with disabilities. If the PHA approves a live-in aide, the live-in aide must be counted when determining the family unit size.

## **NATIONAL STANDARD FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)**

A manufactured home must meet all the NSPIRE requirements outlined in the NSPIRE standards

. In addition, the manufactured home also must meet the following requirements:

- 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.
- A manufactured 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 wind overturning and sliding.