

# **Admissions and Continued Occupancy**

**As of 12/20/24**

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# **Admissions and Occupancy Policy Housing Authority of Westerly Housing Authority**

## **1. PURPOSE AND MISSION**

This Policy is established so that the Westerly Housing Authority (WHA) will meet its responsibilities under the United States Housing Act of 1937, as amended, Title VI of the Civil Rights Act of 1964, and all other civil rights requirements, regulations promulgated by the U. S. Department of Housing and Urban Development (HUD), the Annual Contributions Contract between the Housing Authority and HUD, and State and local laws, concerning admission and occupancy of the Low Rent Public Housing Program.

This Policy governs the admission and occupancy of Public Housing administered by the Westerly Housing Authority hereafter called the WHA. The WHA intends to ensure decent, safe, and sanitary housing for families of limited income in all Public Housing units owned or operated by the WHA under the United States Housing Act of 1937, as amended. The WHA intends to provide a suitable living environment that fosters economic and social diversity and upward mobility. The WHA will periodically review this Policy to ensure compliance with housing legislation and civil rights requirements.

## **MISSION**

The Westerly Housing Authority is dedicated to excellence in providing quality, affordable, and safe housing to eligible persons consistent with community needs. We foster effective and creative partnerships to maximize opportunities that improve the economic and personal well-being of the people we serve. Our agency conducts its business efficiently, professionally, and ethically without discrimination.

### **B. Programs**

The Westerly Housing Authority (WHA) is a public housing agency providing affordable housing opportunities for low-income families, the elderly, and persons with disabilities in the jurisdiction of the Westerly Housing Authority. The WHA currently serves 278 families.

### **C. Location/Office Hours**

Applications and intake interviews are centrally processed at the WHA office at 5 Chestnut Street, Westerly, RI 02891 Monday through Friday 8:00am to 4:00pm. Applications will also be accepted via email at [westerlyha@westerlyha.org](mailto:westerlyha@westerlyha.org), or by mail (United States Postal Service).



## **2. FAIR HOUSING AND REASONABLE ACCOMMODATIONS**

It is the policy of the WHA to fully comply with all Federal, State and local nondiscrimination laws; the Americans with Disabilities Act; and the U. S. Department of Housing and Urban Development regulations governing Fair Housing and Equal Opportunity. The WHA shall affirmatively further fair housing in the administration of its public housing program.

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

No inquiries shall be made about a person's sexual orientation or gender identity. However, the WHA may inquire about a person's sex in order to determine the number of bedrooms a household may be eligible for under the occupancy standards or to accurately complete HUD's 50058.

To further its commitment to full compliance with applicable Civil Rights laws, the WHA will provide Federal/State/local information to applicants/tenants of the Public Housing Program and or the Housing Choice Voucher Program regarding discrimination and any recourse available to them if they believe they may be victims of discrimination. Such information will be made available with the application, and all applicable Fair Housing Information and Discrimination Complaint Forms will be made available at the WHA office. In addition, all written information and advertisements will contain the appropriate Equal Opportunity language and logo.

The WHA will assist any family that believes they have suffered illegal discrimination by providing the family with copies of the appropriate housing discrimination forms. The WHA will also assist them in completing the forms if requested and will provide them with the address of the nearest HUD office of Fair Housing and Equal Opportunity.

The WHA will keep records of all complaints, investigations, notices and corrective actions for five years.

### ***PART 1—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964***

#### *§ 1.1 Purpose.*

*The purpose of this part 1 is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development.*

#### *§ 1.2 Definitions.*

*As used in this part 1—*

*(a) The term Department means the Department of Housing and Urban Development.*

*(b) The term Secretary means the Secretary of Housing and Urban Development.*

*(c) The term responsible Department official means the Secretary or, to the extent of any delegation of authority by the Secretary to act under this part 1, any other Department official to whom the Secretary may hereafter delegate such authority.*

*(d) The term United States means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term State means any one of the foregoing.*

*(e) The term Federal financial assistance includes:*

*(1) Grants, loans, and advances of Federal funds,*

*(2) the grant or donation of Federal property and interests in property,*

*(3) the detail of Federal personnel,*

*(4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and*

*(5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. The term Federal financial assistance does not include a contract of insurance or guaranty.*

*(f) The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, or who otherwise participates in carrying out such program or activity (such as a redeveloper in the Urban Renewal Program), including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity.*

*(g) The term applicant means one who submits an application, contract, request, or plan requiring Department approval as a condition to eligibility for Federal financial assistance, and the term application means such an application, contract, request, or plan.*

*§ 1.3 Application of part 1.*

*This part 1 applies to any program or activity for which Federal financial assistance is authorized under a law administered by the Department. It applies to money paid, property*

*transferred, or other Federal financial assistance extended to any such program or activity on or after January 3, 1965. This part 1 does not apply to: (a) Any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended to any such program or activity before January 3, 1965, (c) any assistance to any person who is the ultimate beneficiary under any such program or activity, or (d) any employment practice, under any such program or activity, of any employer, employment agency, or labor organization, except to the extent described in § 1.4(c).*

*[38 FR 17949, July 5, 1973, as amended at 83 FR 26360, June 7, 2018]*

*§ 1.4 Discrimination prohibited.*

*(a) General. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity to which this part 1 applies.*

*(b) Specific discriminatory actions prohibited.*

*(1) A recipient under any program or activity to which this part 1 applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:*

*(i) Deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;*

*(ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, or are provided in a different manner, from those provided to others under the program or activity;*

*(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;*

*(iv) Restrict a person in any way in access to such housing, accommodations, facilities, services, financial aid, or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;*

*(v) Treat a person differently from others in determining whether he satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;*

*(vi) Deny a person opportunity to participate in the program or activity through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program or activity (including the opportunity to participate in the program or activity as an employee but only to the extent set forth in paragraph (c) of this section).*

*(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.*

*(2)*

*(i) A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin.*

*(ii) A recipient, in operating low-rent housing with Federal financial assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1401 et seq.), shall assign eligible applicants to dwelling units in accordance with a plan, duly adopted by the recipient and approved by the responsible Department official, providing for assignment on a community-wide basis in sequence based upon the date and time the application is received, the size or type of unit suitable, and factors affecting preference or priority established by the recipient's regulations, which are not inconsistent with the objectives of title VI of the Civil Rights Act of 1964 and this part 1. The plan may allow an applicant to refuse a tendered vacancy for good cause without losing his standing on the list but shall limit the number of refusals without cause as prescribed by the responsible Department official.*

*(iii) The responsible Department official is authorized to prescribe and promulgate plans, exceptions, procedures, and requirements for the assignment and reassignment of eligible applicants and tenants consistent with the purpose of paragraph (b)(2)(ii) of this section, this part 1, and title VI of the Civil Rights Act of 1964, in order to effectuate and ensure compliance with the requirements imposed thereunder.*

*(3) In determining the site or location of housing, accommodations, or facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part 1 applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part 1.*

*(4) As used in this part 1 the housing, accommodations, facilities, services, financial aid, or other benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any housing, accommodations, facilities, services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.*



*(5) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.*

*(6)*

*(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.*

*(ii) Even in the absence of such prior discrimination, a recipient in administering a program should take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.*

*Where previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part 1 applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.*

*(c) Employment practices.*

*(1) Where a primary objective of the Federal financial assistance to a program or activity to which this part 1 applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program or activity (including recruitment or recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation and use of facilities). The requirements applicable to construction employment under such program or activity shall be those specified in or pursuant to part III of Executive Order 11246 or any executive order which supersedes or amends it.*

*(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to this part 1 tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part 1 applies, the provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to this part 1 to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.*

*§ 1.5 Assurances required.*

*(a) General.*

*(1) Every contract for Federal financial assistance to carry out a program or activity to which this part 1 applies, executed on or after January 3, 1965, and every application for such Federal*

*financial assistance submitted on or after January 3, 1965, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to such contract or application, contain or be accompanied by an assurance that the program or activity will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this part 1. In the case of a contract or application where the Federal financial assistance is to provide or is in the form of personal property or real property or interest therein or structures thereon, the assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the contract or application. The responsible Department official shall specify the form of the foregoing assurance for such program or activity, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program or activity. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.*

*(2) In the case of real property, structures or improvements thereon, or interests therein, acquired through a program of Federal financial assistance the instrument effecting any disposition by the recipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case where Federal financial assistance is provided in the form of a transfer of real property or interests therein from the Federal Government, the instrument effecting or recording the transfer shall contain such a covenant.*

*(3) In program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part 1 shall extend to any facility located wholly or in part in such space.*

*(b) Preexisting contracts—funds not disbursed. In any case where a contract for Federal financial assistance, to carry out a program or activity to which this part 1 applies, has been executed prior to January 3, 1965, and the funds have not been fully disbursed by the Department, the responsible Department official shall, where necessary to effectuate the purposes of this part 1, require an assurance similar to that provided in paragraph (a) of this section as a condition to the disbursement of further funds.*

*(c) Preexisting contracts—periodic payments. In any case where a contract for Federal financial assistance, to carry out a program or activity to which this part 1 applies, has been executed prior to January 3, 1965, and provides for periodic payments for the continuation of the program or activity, the recipient shall, in connection with the first application for such*

*periodic payments on or after January 3, 1965:*

*(1) Submit a statement that the program or activity is being conducted in compliance with all requirements imposed by or pursuant to this part 1 and*

*(2) provide such methods of administration for the program or activity as are found by the responsible Department official to give reasonable assurance that the recipient will comply with all requirements imposed by or pursuant to this part 1.*

*(d) Assurances from institutions.*

*(1) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.*

*(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of persons as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such persons, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.*

*(e) Elementary and secondary schools. The requirements of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system*

*(1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or*

*(2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health and Human Services determines is adequate to accomplish the purposes of the Act and this part 1 within the earliest practicable time, and provides reasonable assurance that it will carry out such plan.*

*[38 FR 17949, July 5, 1973, as amended at 50 FR 9269, Mar. 7, 1985]*

*§ 1.6 Compliance information.*

*(a) Cooperation and assistance. The responsible Department official and each Department official who by law or delegation has the principal responsibility within the Department for the*

*administration of any law extending financial assistance subject to this part 1 shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part 1 and shall provide assistance and guidance to recipients to help them comply voluntarily with this part 1.*

*(b) Compliance reports. Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part 1. In general, recipients should have available for the department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.*

*(c) Access to sources of information. Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part 1. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.*

*(d) Information to beneficiaries and participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part 1 and its applicability to the program or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part 1.*

#### *§ 1.7 Conduct of investigations.*

*(a) Periodic compliance reviews. The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part 1.*

*(b) Complaints. Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part 1 may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.*

*(c) Investigations. The responsible Department official or his designee shall make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part 1. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part 1 occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.*

*(d) Resolution of matters.*

*(1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part 1, the responsible Department official or his designee will so inform the recipient, and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1.8.*

*(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.*

*(e) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Act or this part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.*

*§ 1.8 Procedure for effecting compliance.*

*(a) General. If there appears to be a failure or threatened failure to comply with this part 1, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part 1 may be affected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. Such other means may include, but are not limited to:*

- (1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and*
- (2) any applicable proceeding under State or local law.*

*(b) Noncompliance with § 1.5. If an applicant fails or refuses to furnish an assurance required under § 1.5 or otherwise fails or refuses to comply with the requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to a contract therefor approved prior to January 3, 1965.*

*(c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until*

- (1) the responsible Department official has advised the applicant or recipient of his failure to*

*comply and has determined that compliance cannot be secured by voluntary means,*

*(2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part 1,*

*(3) the action has been approved by the Secretary, and*

*(4) the expiration of 30 days after the Secretary has filed with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.*

*(d) Other means authorized by law. No action to effect compliance by any other means authorized by law shall be taken until*

*(1) the responsible Department official has determined that compliance cannot be secured by voluntary means,*

*(2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and*

*(3) the expiration of at least 10 days from the mailing of such notice to the applicant or recipient. During this period of at least 10 days additional efforts shall be made to persuade the applicant or recipient to comply with this part 1 and to take such corrective action as may be appropriate.*

#### *§ 1.9 Hearings.*

*(a) Opportunity for hearing. Whenever an opportunity for a hearing is required by § 1.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:*

*(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing, or*

*(2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph (a) or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the*

right to a hearing under section 602 of the Act and § 1.8(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Hearing procedures.* Hearings shall be conducted in accordance with 24 CFR part 180.

[38 FR 17949, July 5, 1973, as amended at 61 FR 52217, Oct. 4, 1996]

§ 1.10 *Effect on other regulations; forms and instructions.*

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against persons on the ground of race, color, or national origin under any program or activity to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant or recipient for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to January 3, 1965. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) *Executive Orders 11246 and 11375 and regulations issued thereunder, or*

(2) *Executive Order 11063 and regulations issued thereunder, or any other order, regulations or instructions, insofar as such order, regulations, or instructions, prohibit discrimination on the ground of race, color, or national origin in any program or activity or situation to which this part is inapplicable, or prohibit discrimination on any other ground.*

(b) *Forms and instructions.* The responsible Department official shall assure that forms and detailed instructions and procedures for effectuating this part are issued and promptly made available to interested persons.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such department or agency, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 1.10), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and this part to similar programs or activities and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the responsible official of this Department.

**PART 8—NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

*Authority:*

*29 U.S.C. 794; 42 U.S.C. 3535(d) and 5309.*

*Source:*

*53 FR 20233, June 2, 1988, unless otherwise noted.*

*Subpart A—General Provisions*

*§ 8.1 Purpose.*

*(a) The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C 794), to the end that no otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development. This part also implements section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309). This part does not effectuate section 504 as it applies to any program or activity conducted by the Department. Compliance with this part does not assure compliance with requirements for accessibility by physically-handicapped persons imposed under the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157; 24 CFR part 40).*

*(b) The policies and standards for compliance established by this part are established in contemplation of, and with a view to enforcement through, the Department's administration of programs or activities receiving Federal financial assistance and the administrative procedures described in subpart D (including, without limitation, judicial enforcement under § 8.57(a)).*

*[53 FR 20233, June 2, 1988, as amended at 83 FR 26361, June 7, 2018]*

*§ 8.2 Applicability.*

*This part applies to all applicants for, and recipients of, HUD assistance in the operation of programs or activities receiving such assistance.*

*[53 FR 20233, June 2, 1988, as amended at 83 FR 26361, June 7, 2018]*

*§ 8.3 Definitions.*

*As used in this part:*

*Accessible, when used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, means that the facility or portion of the facility when designed, constructed or altered, can be approached, entered, and used by individuals with physical handicaps. The phrase accessible to and usable by is synonymous with*



*accessible.*

*Accessible, when used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and when designed, constructed, altered or adapted can be approached, entered, and used by individuals with physical handicaps. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 8.32 is accessible within the meaning of this paragraph. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified individual with handicaps (e.g., a current occupant of such unit or of another unit under the control of the same recipient, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.*

*Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by § 8.32. An accessible route that serves only accessible units occupied by persons with hearing or vision impairments need not comply with those requirements intended to affect accessibility for persons with mobility impairments.*

*Adaptability means the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without handicaps, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed but the alarms need not be installed until such time as the unit is made ready for occupancy by a hearing-impaired person.*

*Alteration means any change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems.*

*Applicant for assistance means one who submits an application, request, plan, or statement required to be approved by a Department official or by a primary recipient as a condition of eligibility for Federal financial assistance. An application means such a request, plan or statement.*

*Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance. For example, auxiliary aids for persons with impaired vision may include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids for persons with impaired hearing may include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.*

*Department or HUD means the Department of Housing and Urban Development.*

*Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other real or personal property or interest in the property.

*Federal financial assistance* means any assistance provided or otherwise made available by the Department through any grant, loan, contract or any other arrangement, in the form of:

(a) Funds;

(b) Services of Federal personnel; or

(c) Real or personal property or any interest in or use of such property, including:

(1) Transfers or leases of the property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.

*Federal financial assistance* includes community development funds in the form of proceeds from loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended, but does not include assistance made available through direct Federal procurement contracts or payments made under these contracts or any other contract of insurance or guaranty.

*Handicap* means any condition or characteristic that renders a person an individual with handicaps.

*Historic preservation programs or activities* means programs or activities receiving Federal financial assistance that have preservation of historic properties as a primary purpose.

*Historic properties* means those properties that are listed or are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

*Individual with handicaps* means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. For purposes of employment, this term does not include: Any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from performing the duties of the job in question, or whose employment, by reason of current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; or any individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job. For purposes of other programs and activities, the term does not include any individual who is an alcoholic or drug abuser whose

*current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:*

*(a) Physical or mental impairment includes:*

*(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or*

*(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.*

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

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

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

*(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;*

*(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or*

*(3) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment.*

*Multifamily housing project means a project containing five or more dwelling units.*

*Primary recipient means a person, group, organization, State or local unit of government that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program or activity.*

*Program or activity means all of the operations of:*

*(a)*

*(1) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or*

*(2) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;*

*(b)*

*(1) A college, university, or other post-secondary institution, or a public system of higher education; or*

*(2) A local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;*

*(c)*

*(1) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—*

*(i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or*

*(ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or*

*(2) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or*

*(d) Any other entity which is established by two or more of the entities described in paragraphs (a), (b), or (c) of this section;*

*any part of which is extended Federal financial assistance.*

*Project means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract for Federal financial assistance or application for assistance, or are treated as a whole for processing purposes, whether or not located on a common site.*

*Qualified individual with handicaps means:*

*(a) With respect to employment, an individual with handicaps who, with reasonable accommodation, can perform the essential functions of the job in question; and*

*(b) With respect to any non-employment program or activity which requires a person to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the recipient can demonstrate would result in a fundamental alteration in its nature; or*

*(c) With respect to any other non-employment program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity. Essential eligibility requirements include stated eligibility requirements such as income as well as other explicit or implicit requirements inherent in the nature of the program or activity, such as requirements that an occupant of multifamily housing be capable of meeting the recipient's selection criteria and be capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the recipient. For example, a chronically mentally ill person whose particular condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his or her own health or safety in the absence of necessary supportive services may be qualified for occupancy in a project where such supportive services are provided by the recipient as part of the assisted program. The person may not be qualified for a project lacking such services.*

*Recipient means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. An entity or person receiving housing assistance payments from a recipient on behalf of eligible families under a housing assistance payments program or a voucher program is not a recipient or subrecipient merely by virtue of receipt of such payments.*

*Replacement cost of the completed facility means the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities. Secretary means the Secretary of Housing and Urban Development.*

*Section 504 means section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, as it applies to programs or activities receiving Federal financial assistance.*

*Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.*

*[53 FR 20233, June 2, 1988; 54 FR 8188, Feb. 27, 1989]*

#### *§ 8.4 Discrimination prohibited.*

*(a) No qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination*

*under any program or activity that receives Federal financial assistance from the Department.*

*(b)*

*(1) A recipient, in providing any housing, aid, benefit, or service in a program or activity that receives Federal financial assistance from the Department may not, directly or through contractual, licensing, or other arrangements, solely on the basis of handicap:*

*(i) Deny a qualified individual with handicaps the opportunity to participate in, or benefit from, the housing, aid, benefit, or service;*

*(ii) Afford a qualified individual with handicaps an opportunity to participate in, or benefit from, the housing, aid, benefit, or service that is not equal to that afforded to others;*

*(iii) Provide a qualified individual with handicaps with any housing, aid, benefit, or service that is not as effective in affording the individual an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;*

*(iv) Provide different or separate housing, aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps from that provided to others unless such action is necessary to provide qualified individuals with handicaps with housing, aid, benefits, or services that are as effective as those provided to others.*

*(v) Aid or perpetuate discrimination against a qualified individual with handicaps by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any housing, aid, benefit, or service to beneficiaries in the recipient's federally assisted program or activity;*

*(vi) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;*

*(vii) Deny a dwelling to an otherwise qualified buyer or renter because of a handicap of that buyer or renter or a person residing in or intending and eligible to reside in that dwelling after it is sold, rented or made available; or*

*(viii) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other qualified individuals receiving the housing, aid, benefit, or service.*

*(2) For purposes of this part, housing, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with handicaps and non-handicapped persons, but must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.*

*(3) A recipient may not deny a qualified individual with handicaps the opportunity to participate in any federally assisted program or activity that is not separate or different despite the existence*

*of permissibly separate or different programs or activities.*

*(4) In any program or activity receiving Federal financial assistance from the Department, a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:*

*(i) Subject qualified individuals with handicaps to discrimination solely on the basis of handicap;*

*(ii) Defeat or substantially impair the accomplishment of the objectives of the recipient's federally assisted program or activity for qualified individuals with a particular handicap involved in the program or activity, unless the recipient can demonstrate that the criteria or methods of administration are manifestly related to the accomplishment of an objective of a program or activity; or*

*(iii) Perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.*

*(5) In determining the site or location of a federally assisted facility, an applicant for assistance or a recipient may not make selections the purpose or effect of which would:*

*(i) Exclude qualified individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity that receives Federal financial assistance from the Department, or*

*(ii) Defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to qualified individuals with handicaps.*

*(6) As used in this section, the housing, aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any housing, aid, benefit, or service provided in or through a facility that has been constructed, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.*

*(c)*

*(1) Non-handicapped persons may be excluded from the benefits of a program if the program is limited by Federal statute or executive order to individuals with handicaps. A specific class of individuals with handicaps may be excluded from a program if the program is limited by Federal statute or Executive order to a different class of individuals.*

*(2) Certain Department programs operate under statutory definitions of handicapped person that are more restrictive than the definition of individual with handicaps contained in § 8.3. Those definitions are not superseded or otherwise affected by this regulation.*

*(d) Recipients shall administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with handicaps.*

*(e) The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement that, based on handicap, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with handicaps to receive services or to practice any occupation or profession.*

*(f) The enumeration of specific forms of prohibited discrimination in paragraphs (b) through (e) of this section does not limit the general prohibition in paragraph (a) of this section.*

*[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988, as amended at 83 FR 23961, June 7, 2018]*

*§ 8.5 [Reserved]*

*§ 8.6 Communications.*

*(a) The recipient shall take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public.*

*(1) The recipient shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance.*

*(i) In determining what auxiliary aids are necessary, the recipient shall give primary consideration to the requests of the individual with handicaps.*

*(ii) The recipient is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.*

*(2) Where a recipient communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective communication systems shall be used.*

*(b) The recipient shall adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities, and facilities.*

*(c) This section does not require a recipient to take any action that the recipient can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or burdens, the recipient shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity receiving HUD assistance.*

*Subpart B—Employment*



*§ 8.10 General prohibitions against employment discrimination.*

*(a) No qualified individual with handicaps shall, solely on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance from the Department.*

*(b) A recipient may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.*

*(c) The prohibition against discrimination in employment applies to the following activities:*

*(1) Recruitment, advertising, and the processing of applications for employment;*

*(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, injury or illness, and rehiring;*

*(3) Rates of pay or any other form of compensation and changes in compensation;*

*(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;*

*(5) Leaves of absence, sick leave, or any other leave;*

*(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;*

*(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence for training;*

*(8) Employer sponsored activities, including social or recreational programs; and*

*(9) Any other term, condition, or privilege of employment.*

*(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified applicants with handicaps or employees with handicaps to discrimination prohibited by this subpart. The relationships referred to in this paragraph (d) include relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs.*

*§ 8.11 Reasonable accommodation.*

*(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant with handicaps or employee with handicaps, unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.*

*(b) Reasonable accommodation may include:*

*(1) Making facilities used by employees accessible to and usable by individuals with handicaps and*

*(2) Job restructuring, job relocation, part-time or modified work schedules, acquisitions or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.*

*(c) In determining, under paragraph (a) of this section, whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:*

*(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;*

*(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and*

*(3) The nature and cost of the accommodation needed.*

*(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.*

*§ 8.12 Employment criteria.*

*(a) A recipient may not use any employment test or other selection criterion that screens out or tends to screen out individuals with handicaps or any class of individuals with handicaps unless:*

*(1) The recipient demonstrates that the test score or other selection criterion, as used by the recipient, is job-related for the position in question; and*

*(2) The appropriate HUD official demonstrates that alternative job-related tests or criteria that tend to screen out fewer individuals with handicaps are unavailable.*

*(b) A recipient shall select and administer tests concerning employment to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).*

*§ 8.13 Preemployment inquiries.*

*(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not make a preemployment inquiry or conduct a preemployment medical examination of an applicant to determine whether the applicant is an individual with handicaps or the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.*

*(b) When a recipient is undertaking affirmative action efforts, voluntary or otherwise, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, if the following conditions are met:*

*(1) The recipient states clearly on any written questionnaire used for this purpose, or makes clear orally if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations, or its voluntary or affirmative action efforts; and*

*(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential (as provided in paragraph (d) of this section), that refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with this part.*

*(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted before the employee's entrance on duty if all entering employees in that category of job classification must take such an examination regardless of handicap, and the results of such examination are used only in accordance with the requirements of this part.*

*(d) Information obtained under this section concerning the medical condition or history of the applicant is to be collected and maintained on separate forms that are accorded confidentiality as medical records, except that:*

*(1) Supervisors and managers may be informed of restrictions on the work or duties of individuals with handicaps and informed of necessary accommodations;*

*(2) First aid and safety personnel may be informed if the condition might require emergency treatment; and*

*(3) Government officials investigating compliance with section 504 shall be provided relevant information upon request.*

#### *Subpart C—Program Accessibility*

##### *§ 8.20 General requirement concerning program accessibility.*

*Except as otherwise provided in §§ 8.21(c)(1), 8.24(a), 8.25, and 8.31, no qualified individual with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or*

*otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance.*

*§ 8.21 Non-Housing facilities.*

*(a) New construction. New non-housing facilities shall be designed and constructed to be readily accessible to and usable by individuals with handicaps.*

*(b) Alterations to facilities. Alterations to existing non-housing facilities shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase to the maximum extent feasible shall not be interpreted as requiring that a recipient make a non-housing facility, or element thereof, accessible if doing so would impose undue financial and administrative burdens on the operation of the recipient's program or activity.*

*(c) Existing non-housing facilities —*

*(1) General. A recipient shall operate each non-housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—*

*(i) Necessarily require a recipient to make each of its existing non-housing facilities accessible to and usable by individuals with handicaps;*

*(ii) In the case of historic preservation programs or activities, require the recipient to take any action that would result in a substantial impairment of significant historic features of an historic property; or*

*(iii) Require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the recipient shall take any action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.*

*(2) Methods —*

*(i) General. A recipient may comply with the requirements of this section in its programs and activities receiving Federal financial assistance through such means as location of programs or services to accessible facilities or accessible portions of facilities, assignment of aides to beneficiaries, home visits, the addition or redesign of equipment (e.g., appliances or furnishings) changes in management policies or procedures, acquisition or construction of additional facilities, or alterations to existing facilities on a selective basis, or any other methods that result in making its program or activity accessible to individuals with handicaps. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the*

*requirements of this section, the recipient shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.*

*(ii) Historic preservation programs or activities. In meeting the requirements of § 8.21(c) in historic preservation programs or activities, a recipient shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 8.21(c)(1)(ii) or (iii), alternative methods of achieving program accessibility include using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible; assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or adopting other innovative methods.*

*(3) Time period for compliance. The recipient shall comply with the obligations established under this section within sixty days of July 11, 1988, except that where structural changes in facilities are undertaken, such changes shall be made within three years of July 11, 1988, but in any event as expeditiously as possible.*

*(4) Transition plan. If structural changes to non-housing facilities will be undertaken to achieve program accessibility, a recipient shall develop, within six months of July 11, 1988, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—*

*(i) Identify physical obstacles in the recipient's facilities that limit the accessibility of its programs or activities to individuals with handicaps;*

*(ii) Describe in details the methods that will be used to make the facilities accessible;*

*(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;*

*(iv) Indicate the official responsible for implementation of the plan; and*

*(v) Identify the persons or groups with whose assistance the plan was prepared.*

*(Approved by the Office of Management and Budget under control number 2529-0034)*

*[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988, as amended at 54 FR 37645, Sept. 12, 1989]*

*§ 8.22 New construction—housing facilities.*

*(a) New multifamily housing projects (including public housing and Indian housing projects as*

required by § 8.25) shall be designed and constructed to be readily accessible to and usable by individuals with handicaps.

(b) Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 8.32 is accessible for purposes of this section. An additional two percent of the units (but not less than one unit) in such a project shall be accessible for persons with hearing or vision impairments.

(c) HUD may prescribe a higher percentage or number than that prescribed in paragraph (b) of this section for any area upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible persons with and without handicaps.

[53 FR 20233, June 2, 1988, as amended at 56 FR 920, Jan. 9, 1991]

#### § 8.23 Alterations of existing housing facilities.

(a) *Substantial alteration.* If alterations are undertaken to a project (including a public housing project as required by § 8.25(a)(2)) that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the provisions of § 8.22 shall apply.

(b) *Other alterations.*

(1) Subject to paragraph (b)(2) of this section, alterations to dwelling units in a multifamily housing project (including public housing) shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase to the maximum extent feasible shall not be interpreted as requiring that a recipient (including a PHA) make a dwelling unit, common area, facility or element thereof accessible if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.

*(2) HUD may prescribe a higher percentage or number than that prescribed in paragraph (b)(1) of this section for any area upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible persons with and without handicaps.*

*§ 8.24 Existing housing programs.*

*(a) General. A recipient shall operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—*

*(1) Necessarily require a recipient to make each of its existing facilities accessible to and usable by individuals with handicaps;*

*(2) Require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the recipient shall take any action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.*

*(b) Methods. A recipient may comply with the requirements of this section through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, provision of housing or related services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. A recipient is not required to make structural changes in existing housing facilities where other methods are effective in achieving compliance with this section or to provide supportive services that are not part of the program. In choosing among available methods for meeting the requirements of this section, the recipient shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.*

*(c) Time period for compliance. The recipient shall comply with the obligations established under this section within sixty days of July 11, 1988 except that—*

*(1) In a public housing program where structural changes in facilities are undertaken, such changes shall be made within the timeframes established in § 8.25(c).*

*(2) In other housing programs, where structural changes in facilities are undertaken, such changes shall be made within three years of July 11, 1988, but in any event as expeditiously as*

*possible.*

*(d) Transition plan and time period for structural changes. Except as provided in § 8.25(c), in the event that structural changes to facilities will be undertaken to achieve program accessibility, a recipient shall develop, within six months of July 11, 1988, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—*

*(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its programs or activities to individuals with handicaps;*

*(2) Describe in detail the methods that will be used to make the facilities accessible;*

*(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;*

*(4) Indicate the official responsible for implementation of the plan; and*

*(5) Identify the persons or groups with whose assistance the plan was prepared.*

*(Approved by the Office of Management and Budget under control number 2529-0034)*

*[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988, as amended at 54 FR 37645, Sept. 12, 1989]*

*§ 8.25 Public housing and multi-family Indian housing.*

*(a) Development and alteration of public housing and multi-family Indian housing.*

*(1) The requirements of § 8.22 shall apply to all newly constructed public housing and multi-family Indian housing.*

*(2) The requirements of § 8.23 shall apply to public housing and multi-family Indian housing developed through rehabilitation and to the alteration of public housing and multi-family Indian housing.*

*(3) In developing public housing and multi-family Indian housing through the purchase of existing properties PHAs and IHAs shall give priority to facilities which are readily accessible to and usable by individuals with handicaps.*

*(b) Existing public housing and multi-family Indian housing—general. The requirements of § 8.24(a) shall apply to public housing and multi-family Indian housing programs.*



*(c) Existing public housing and multi-family Indian housing—needs assessment and transition plan. As soon as possible, each PHA (for the purpose of this paragraph, this includes an Indian Housing Authority) shall assess, on a PHA-wide basis, the needs of current tenants and applicants on its waiting list for accessible units and the extent to which such needs have not been met or cannot reasonably be met within four years through development, alterations otherwise contemplated, or other programs administered by the PHA (e.g., Section 8 Moderate Rehabilitation or Section 8 Existing Housing or Housing Vouchers). If the PHA currently has no accessible units or if the PHA or HUD determines that information regarding the availability of accessible units has not been communicated sufficiently so that, as a result, the number of eligible qualified individuals with handicaps on the waiting list is not fairly representative of the number of such persons in the area, the PHA's assessment shall include the needs of eligible qualified individuals with handicaps in the area. If the PHA determines, on the basis of such assessment, that there is no need for additional accessible dwelling units or that the need is being or will be met within four years through other means, such as new construction, Section 8 or alterations otherwise contemplated, no further action is required by the PHA under this paragraph. If the PHA determines, on the basis of its needs assessment, that alterations to make additional units accessible must be made so that the needs of eligible qualified individuals with handicaps may be accommodated proportionally to the needs of non-handicapped individuals in the same categories, then the PHA shall develop a transition plan to achieve program accessibility. The PHA shall complete the needs assessment and transition plan, if one is necessary, as expeditiously as possible, but in any event no later than two years after July 11, 1988. The PHA shall complete structural changes necessary to achieve program accessibility as soon as possible but in any event no later than four years after July 11, 1988. The Assistant Secretary for Fair Housing and Equal Opportunity and the Assistant Secretary for Public and Indian Housing may extend the four-year period for a period not to exceed two years, on a case-by-case determination that compliance within that period would impose undue financial and administrative burdens on the operation of the recipient's public housing and multi-family Indian housing program. The Secretary or the Undersecretary may further extend this time period in extraordinary circumstances, for a period not to exceed one year. The plan shall be developed with the assistance of interested persons including individuals with handicaps or organizations representing individuals with handicaps. A copy of the needs assessment and transition plan shall be made available for public inspection. The transition plan shall, at a minimum—*

*(1) Identify physical obstacles in the PHA's facilities (e.g., dwelling units and common areas) that limit the accessibility of its programs or activities to individuals with handicaps;*

*(2) Describe in detail the methods that will be used to make the PHA's facilities accessible. A PHA may, if necessary, provide in its plan that it will seek HUD approval, under 24 CFR part 968, of a comprehensive modernization program to meet the needs of eligible individuals with handicaps;*

*(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;*

*(4) Indicate the official responsible for implementation of the plan; and*

*(5) Identify the persons or groups with whose assistance the plan was prepared.*

*(Approved by the Office of Management and Budget under control number 2529-0034)*

*[53 FR 20233, June 2, 1988, as amended at 54 FR 37645, Sept. 12, 1989; 56 FR 920, Jan. 9, 1991]*

*§ 8.26 Distribution of accessible dwelling units.*

*Accessible dwelling units required by § 8.22, 8.23, 8.24 or 8.25 shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with handicaps' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same program. This provision shall not be construed to require provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level.*

*§ 8.27 Occupancy of accessible dwelling units.*

*(a) Owners and managers of multifamily housing projects having accessible units shall adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the owner or manager before offering such units to a non-handicapped applicant shall offer such unit:*

*(1) First, to a current occupant of another unit of the same project, or comparable projects under common control, having handicaps requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then*

*(2) Second, to an eligible qualified applicant on the waiting list having a handicap requiring the accessibility features of the vacant unit.*

*(b) When offering an accessible unit to an applicant not having handicaps requiring the accessibility features of the unit, the owner or manager may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.*

*§ 8.28 Housing certificate and housing voucher programs.*

*(a) In carrying out the requirements of this subpart, a recipient administering a Section 8 Existing Housing Certificate program or a housing voucher program shall:*

*(1) In providing notice of the availability and nature of housing assistance for low-income*

*families under program requirements, adopt suitable means to assure that the notice reaches eligible individuals with handicaps;*

*(2) In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;*

*(3) When issuing a Housing Certificate or Housing Voucher to a family which includes an individual with handicaps include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit;*

*(4) Take into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with handicaps for extensions of Housing Certificates or Housing Vouchers; and*

*(5) If necessary as a reasonable accommodation for a person with disabilities, approve a family request for an exception rent under § 982.504(b)(2) for a regular tenancy under the Section 8 certificate program so that the program is readily accessible to and usable by persons with disabilities.*

*(b) In order to ensure that participating owners do not discriminate in the recipient's federally assisted program, a recipient shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of nondiscrimination.*

*[53 FR 20233, June 2, 1988, as amended at 63 FR 23853, Apr. 30, 1998]*

*§ 8.29 Homeownership programs (sections 235(i) and 235(j), Turnkey III and Indian housing mutual self-help programs).*

*Any housing units newly constructed or rehabilitated for purchase or single family (including semi-attached and attached) units to be constructed or rehabilitated in a program or activity receiving Federal financial assistance shall be made accessible upon request of the prospective buyer if the nature of the handicap of an expected occupant so requires. In such case, the buyer shall consult with the seller or builder/sponsor regarding the specific design features to be provided. If accessibility features selected at the option of the homebuyer are ones covered by the standards prescribed by § 8.32, those features shall comply with the standards prescribed in § 8.32. The buyer shall be permitted to depart from particular specifications of these standards in order to accommodate his or her specific handicap. The cost of making a facility accessible under this paragraph may be included in the mortgage amount within the allowable mortgage limits, where applicable. To the extent such costs exceed allowable mortgage limits, they may be passed on to the prospective homebuyer, subject to maximum sales price limitations (see 24 CFR 235.320.)*

*§ 8.30 Rental rehabilitation program.*

*Each grantee or state recipient in the rental rehabilitation program shall, subject to the priority*

*in 24 CFR 511.10(l) and in accordance with other requirements in 24 CFR part 511, give priority to the selection of projects that will result in dwelling units being made readily accessible to and usable by individuals with handicaps.*

*[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988]*

#### *§ 8.31 Historic properties.*

*If historic properties become subject to alterations to which this part applies the requirements of § 4.1.7 of the standards of § 8.32 of this part shall apply, except in the case of the Urban Development Action Grant (UDAG) program. In the UDAG program the requirements of 36 CFR part 801 shall apply. Accessibility to historic properties subject to alterations need not be provided if such accessibility would substantially impair the significant historic features of the property or result in undue financial and administrative burdens.*

#### *§ 8.32 Accessibility standards.*

*(a) Effective as of July 11, 1988, design, construction, or alteration of buildings in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) shall be deemed to comply with the requirements of §§ 8.21, 8.22, 8.23, and 8.25 with respect to those buildings. Departures from particular technical and scoping requirements of the UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided. The alteration of housing facilities shall also be in conformance with additional scoping requirements contained in this part. Persons interested in obtaining a copy of the UFAS are directed to § 40.7 of this title.*

*(b) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of individuals with physical handicaps.*

*(c) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.*

*(d) For purposes of this section, section 4.1.4(11) of UFAS may not be used to waive or lower the minimum of five percent accessible units required by § 8.22(b) or to apply the minimum only to projects of 15 or more dwelling units.*

*(e) Except as otherwise provided in this paragraph, the provisions of §§ 8.21 (a) and (b), 8.22 (a) and (b), 8.23, 8.25(a) (1) and (2), and 8.29 shall apply to facilities that are designed, constructed or altered after July 11, 1988. If the design of a facility was commenced before July 11, 1988, the provisions shall be followed to the maximum extent practicable, as determined by the Department. For purposes of this paragraph, the date a facility is constructed or altered shall be deemed to be the date bids for the construction or alteration of the facility are solicited. For purposes of the Urban Development Action Grant (UDAG) program, the provisions shall apply to the construction or alteration of facilities that are funded under applications submitted*

*after July 11, 1988. If the UDAG application was submitted before July 11, 1988, the provisions shall apply, to the maximum extent practicable, as determined by the Department.*

*[53 FR 20233, June 2, 1988, as amended at 61 FR 5203, Feb. 9, 1996]*

*§ 8.33 Housing adjustments.*

*A recipient shall modify its housing policies and practices to ensure that these policies and practices do not discriminate, on the basis of handicap, against a qualified individual with handicaps. The recipient may not impose upon individuals with handicaps other policies, such as the prohibition of assistive devices, auxiliary alarms, or guides in housing facilities, that have the effect of limiting the participation of tenants with handicaps in the recipient's federally assisted housing program or activity in violation of this part. Housing policies that the recipient can demonstrate are essential to the housing program or activity will not be regarded as discriminatory within the meaning of this section if modifications to them would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burdens.*

*Subpart D—Enforcement*

*§ 8.50 Assurances required.*

*(a) Assurances. An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance to HUD, or in the case of a subrecipient to a primary recipient, on a form specified by the responsible civil rights official, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.*

*(b) Duration of obligation.*

*(1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.*

*(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.*

*(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.*

*(c) Covenants.*

*(1) Where Federal financial assistance is provided in the form of real property or interest in the*

*property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.*

*(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.*

*(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.*

#### *§ 8.51 Self-evaluation.*

*(a) Each recipient shall, within one year of July 11, 1988, and after consultation with interested persons, including individuals with handicaps or organizations representing individuals with handicaps:*

*(1) Evaluate its current policies and practices to determine whether, in whole or in part, they do not or may not meet the requirements of this part;*

*(2) Modify any policies and practices that do not meet the requirements of this part; and*

*(3) Take appropriate corrective steps to remedy the discrimination revealed by the self-evaluation.*

*(b) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (a)(1) of this section, maintain on file, make available for public inspection, and provide to the responsible civil rights official, upon request:*

*(1) A list of the interested persons consulted;*

*(2) a description of areas examined and any problems identified; and*

*(3) a description of any modifications made and of any remedial steps taken.*

*(Approved by the Office of Management and Budget under control number 2529-0034)*

[53 FR 20233, June 2, 1988, as amended at 54 FR 37645, Sept. 12, 1989]

§ 8.52 Remedial and affirmative action.

(a) Remedial action.

(1) *If the responsible civil rights official finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the responsible civil rights official deems necessary to overcome the effects of the discrimination.*

(2) *The responsible civil rights official may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action—*

(i) *With respect to individuals with handicaps who are no longer participants in the program but who were participants in the program when such discrimination occurred or*

(ii) *With respect to individuals with handicaps who would have been participants in the program had the discrimination not occurred.*

(b) *Voluntary action. A recipient may take nondiscriminatory steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified individuals with handicaps.*

§ 8.53 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.*

(b) *Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to housing covered by this part.*

§ 8.54 Notice.

(a) *A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 8.53. A recipient shall make the initial*

notification required by this paragraph within 90 days of July 11, 1988. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

(c) The recipient shall ensure that members of the population eligible to be served or likely to be affected directly by a federally assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

#### § 8.55 Compliance information.

(a) Cooperation and assistance. The responsible civil rights official and the award official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) Compliance reports. Each recipient shall keep such records and submit to the responsible civil rights official or his or her designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible civil rights official or his or her designee may determine to be necessary to enable him or her to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the Department data showing the extent to which individuals with handicaps are beneficiaries of federally assisted programs.

(c) Access to sources of information. Each recipient shall permit access by the responsible civil rights official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) Information to beneficiaries and participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner as the responsible civil rights official finds necessary to apprise such persons of the protections against discrimination assured them by this part.



*(Approved by the Office of Management and Budget under control number 2529–0034)*

*[53 FR 20233, June 2, 1988, as amended at 54 FR 37645, Sept. 12, 1989]*

*§ 8.56 Conduct of investigations.*

*(a) Periodic compliance reviews. The responsible civil rights official or designee may periodically review the practices of recipients to determine whether they are complying with this part and where he or she has a reasonable basis to do so may conduct on-site reviews. Such basis may include any evidence that a problem exists or that programmatic matters exist that justify on-site investigation in selected circumstances. The responsible civil rights official shall initiate an on-site review by sending to the recipient a letter advising the recipient of the practices to be reviewed; the programs affected by the review; and the opportunity, at any time prior to receipt of a final determination, to make a documentary or other submission that explains, validates, or otherwise addresses the practices under review. In addition, each award official shall include in normal program compliance reviews and monitoring procedures appropriate actions to review and monitor compliance with general or specific program requirements designed to effectuate the requirements of this part.*

*(b) Investigations. The responsible civil rights official shall make a prompt investigation whenever a compliance review, report, complaint or any other information indicates a possible failure to comply with this part.*

*(c) Filing a complaint —*

*(1) Who may file. Any person who believes that he or she has been subjected to discrimination prohibited by this part may by himself or herself or by his or her authorized representative file a complaint with the responsible civil rights official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or who is the authorized representative of a member of that class may file a complaint with the responsible civil rights official.*

*(2) Confidentiality. The responsible civil rights official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.*

*(3) When to file. Complaints shall be filed within 180 days of the alleged act of discrimination, unless the responsible civil rights official waives this time limit for good cause shown. For purposes of determining when a complaint is filed under this paragraph, a complaint mailed to the Department shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the Department.*

*(4) Where to file complaints. Complaints may be filed by mail with the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC*

20410, or any Regional or Field Office of the Department.

(5) *Contents of complaints.* Each complaint should contain the complainant's name and address, the name and address of the recipient alleged to have violated this part, and a description of the recipient's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation of this part.

(6) *Amendments of complaints.* Complaints may be reasonably and fairly amended at any time. Amendments to complaints such as clarification and amplification of allegations in a complaint or the addition of other recipients may be made at any time during the pendency of the complaint and any amendment shall be deemed to be made as of the original filing date.

(d) *Notification.* The responsible civil rights official will notify the complainant and the recipient of the agency's receipt of the complaint within ten (10) calendar days.

(e) *Complaint processing procedures.* After acknowledging receipt of a complaint, the responsible civil rights official will immediately initiate complaint processing procedures.

(1) *Preliminary investigation.*

(i) *Within twenty (20) calendar days of acknowledgement of the complaint, the responsible civil rights official will review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.*

(ii) *If the complaint is accepted, the responsible civil rights official will notify the complainant and the award official. The responsible civil rights official will also notify the applicant or recipient complained against of the allegations and give the applicant or recipient an opportunity to make a written submission responding to, rebutting, or denying the allegations raised in the complaint.*

(iii) *The party complained against may send the responsible civil rights official a response to the notice of complaint within thirty (30) calendar days of receiving it. With leave of the responsible civil rights official, an answer may be amended at any time. The responsible civil rights official will permit answers to be amended for good cause shown.*

(2) *Informal resolution.* In accordance with paragraph (j) of this section, the responsible civil rights official shall attempt to resolve complaints informally whenever possible.

(f) *Dismissal of complaint.* If the investigation reveals no violation of this part, the responsible civil rights official will dismiss the complaint and notify the complainant and recipient.

(g) *Letter of findings.* If an informal resolution of the complaint is not reached the responsible civil rights official or his or her designee shall, within 180 days of receipt of the complaint, notify the recipient and the complainant (if any) of the results of the investigation in a letter sent by certified mail, return receipt requested, containing the following:

(1) *Preliminary findings of fact and a preliminary finding of compliance or noncompliance;*

*(2) A description of an appropriate remedy for each violation believed to exist;*

*(3) A notice that a copy of the Final Investigative Report of the Department will be made available, upon request, to the recipient and the complainant (if any); and*

*(4) A notice of the right of the recipient and the complainant (if any) to request a review of the letter of findings by the reviewing civil rights official.*

*(h) Right to review of the letter of findings.*

*(1) A complainant or recipient may request that a complete review be made of the letter of findings within 30 days of receipt, by mailing or delivering to the reviewing civil rights official, Office of Fair Housing and Equal Opportunity, Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified in light of supplementary information.*

*(2) The reviewing civil rights official shall send by certified mail, return receipt requested, a copy of the request for review to the other party, if any. Such other party shall have 20 days to respond to the request for review.*

*(3) The reviewing civil rights official shall either sustain or modify the letter of findings within 60 days of the request for review. The reviewing civil rights official's decision shall constitute the formal determination.*

*(4) If neither party requests that the letter of findings be reviewed, the responsible civil rights official shall, within fourteen (14) calendar days of the expiration of the time period in paragraph (h)(1) of this section, send a formal written determination of compliance or noncompliance to the recipient and copies to the award official.*

*(i) Voluntary compliance time limits. The recipient will have ten (10) calendar days from receipt of the formal determination of noncompliance within which to come into voluntary compliance. If the recipient fails to meet this deadline, HUD shall proceed under § 8.57.*

*(j) Informal resolution/voluntary compliance —*

*(1) General. It is the policy of the Department to encourage the informal resolution of matters. The responsible civil rights official may attempt to resolve a matter through informal means at any stage of processing. A matter may be resolved by informal means at any time. If a letter of findings making a preliminary finding of noncompliance is issued, the responsible civil rights official shall attempt to resolve the matter by informal means.*

*(2) Objectives of informal resolution/voluntary compliance. In attempting informal resolution, the responsible civil rights official shall attempt to achieve a just resolution of the matter and to obtain assurances where appropriate, that the recipient will satisfactorily remedy any violations of the rights of any complainant and will take such action as will assure the elimination of any violation of this part or the prevention of the occurrence of such violation in the future. The terms of such an informal resolution shall be reduced to a written voluntary compliance*

agreement, signed by the recipient and the responsible civil rights official, and be made part of the file for the matter. Such voluntary compliance agreements shall seek to protect the interests of the complainant (if any), other persons similarly situated, and the public interest.

*(k) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this part, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of investigation, hearing or judicial proceeding arising thereunder.*

*[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988; 53 FR 34634, Sept. 7, 1988]*

*§ 8.57 Procedure for effecting compliance.*

*(a) General. If there appears to be a failure or threatened failure to comply with this part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be affected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by other means authorized by law. Such other means may include, but are not limited to:*

*(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking;*

*(2) The initiation of debarment proceedings pursuant to 2 CFR part 2424; and*

*(3) Any applicable proceeding under State or local law.*

*(b) Noncompliance with § 8.50. If an applicant or a recipient of assistance under a contract which is extended or amended on or after July 11, 1988, fails or refuses to furnish an assurance required under § 8.50 or otherwise fails or refuses to comply with the requirements imposed by that section, Federal financial assistance may be refused under paragraph (c) of this section. The Department is not required to provide assistance during the pendency of the administrative proceeding under such paragraph (c), except where the assistance is due and payable under a contract approved before July 11, 1988.*

*(c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:*

*(1) The responsible civil rights official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;*

*(2) There has been an express finding on the record, after opportunity for hearing, of a failure by*

*the applicant or recipient to comply with a requirement imposed under this part;*

*(3) The action has been approved by the Secretary; and*

*(4) The expiration of 30 days after the Secretary has filed with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate, or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.*

*(d) Notice to State or local government. Whenever the Secretary determines that a State or unit of general local government which is a recipient of Federal financial assistance under title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301–5318) has failed to comply with a requirement of this part with respect to a program or activity funded in whole or in part with such assistance, the Secretary shall notify the Governor of the State or the chief executive officer of the unit of general local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. The notice shall be given at least sixty days before:*

*(1) An order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective under paragraph (c) of this section; or*

*(2) Any action to effect compliance by any other means authorized by law is taken under paragraph (a) of this section.*

*(e) Other means authorized by law. No action to effect compliance by any other means authorized by law shall be taken until:*

*(1) The responsible civil rights official has determined that compliance cannot be secured by voluntary means;*

*(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and*

*(3) At least 10 days have elapsed since the mailing of such notice to the applicant or recipient. During this period, additional efforts shall be made to persuade the applicant or recipient to comply with this part and to take such corrective action as may be appropriate.*

*However, this paragraph shall not be construed to prevent an award official from utilizing appropriate procedures and sanctions established under the program to assure or secure compliance with a specific requirement of the program designed to effectuate the objectives of this part.*

*[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988, as amended at 72 FR 73491, Dec. 27,*

2007]

§ 8.58 Hearings.

*(a) Opportunity for hearing. Whenever an opportunity for a hearing is required by § 8.57(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action. The notice shall:*

*(1) Fix a date not less than 20 days after the date of the notice for the applicant or recipient to request the administrative law judge to schedule a hearing, or*

*(2) Advise the applicant or recipient that the matter has been scheduled for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set is a waiver of the right to a hearing under § 8.57(c) and consent to the making of a decision on the basis of available information.*

*(b) Hearing procedures. Hearings shall be conducted in accordance with 24 CFR part 180.*

*PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT*

*Authority:*

*42 U.S.C. 3535(d), 3600–3620.*

*Source:*

*54 FR 3283, Jan. 23, 1989, unless otherwise noted.*

*Subpart A—General*

*§ 100.1 Authority.*

*This regulation is issued under the authority of the Secretary of Housing and Urban Development to administer and enforce title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Fair Housing Act).*

*§ 100.5 Scope.*

*(a) It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. No person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of*

*residential real estate-related transactions.*

*(b) This part provides the Department's interpretation of the coverage of the Fair Housing Act regarding discrimination related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions. The illustrations of unlawful housing discrimination in this part may be established by a practice's discriminatory effect, even if not motivated by discriminatory intent, consistent with the standards outlined in § 100.500.*

*(c) Nothing in this part relieves persons participating in a Federal or Federally-assisted program or activity from other requirements applicable to buildings and dwellings.*

*[54 FR 3283, Jan. 23, 1989, as amended at 78 FR 11481, Feb. 15, 2013; 85 FR 60332, Sept. 24, 2020; 88 FR 19500, Mar. 31, 2023]*

*§ 100.7 Liability for discriminatory housing practices.*

*(a) Direct liability.*

*(1) A person is directly liable for:*

*(i) The person's own conduct that results in a discriminatory housing practice.*

*(ii) Failing to take prompt action to correct and end a discriminatory housing practice by that person's employee or agent, where the person knew or should have known of the discriminatory conduct.*

*(iii) Failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it. The power to take prompt action to correct and end a discriminatory housing practice by a third-party depends upon the extent of the person's control or any other legal responsibility the person may have with respect to the conduct of such third-party.*

*(2) For purposes of determining liability under paragraphs (a)(1)(ii) and (iii) of this section, prompt action to correct and end the discriminatory housing practice may not include any action that penalizes or harms the aggrieved person, such as eviction of the aggrieved person.*

*(b) Vicarious liability. A person is vicariously liable for a discriminatory housing practice by the person's agent or employee, regardless of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice, consistent with agency law.*

*[81 FR 63074, Sept. 14, 2016]*

*§ 100.10 Exemptions.*

*(a) This part does not:*

*(1) Prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted because of race, color, or national origin;*

*(2) Prohibit a private club, not in fact open to the public, which, incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members;*

*(3) Limit the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling; or*

*(4) Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).*

*(b) Nothing in this part regarding discrimination based on familial status applies with respect to housing for older persons as defined in subpart E of this part.*

*(c) Nothing in this part, other than the prohibitions against discriminatory advertising, applies to:*

*(1) The sale or rental of any single family house by an owner, provided the following conditions are met:*

*(i) The owner does not own or have any interest in more than three single family houses at any one time.*

*(ii) The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this paragraph (c)(1) of this section applies to only one such sale in any 24-month period.*

*(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.*

#### *§ 100.20 Definitions.*

*The terms Department, Fair Housing Act, and Secretary are defined in 24 CFR part 5.*

*Aggrieved person includes any person who—*



*(a) Claims to have been injured by a discriminatory housing practice; or*

*(b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.*

*Broker or Agent* includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

*Discriminatory housing practice* means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.

*Dwelling* means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

*Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with—

*(a) A parent or another person having legal custody of such individual or individuals; or*

*(b) The designee of such parent or other person having such custody, with the written permission of such parent or other person.*

*The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.*

*Handicap* is defined in § 100.201.

*Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 U.S.C., receivers, and fiduciaries.

*Person in the business of selling or renting dwellings* means any person who:

*(a) Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;*

*(b) Within the preceding twelve months, has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or*

*(c) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.*

*State means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.*

*[54 FR 3283, Jan. 23, 1989, as amended at 61 FR 5205, Feb. 9, 1996]*

*Subpart B—Discriminatory Housing Practices*

*§ 100.50 Real estate practices prohibited.*

*(a) This subpart provides the Department's interpretation of conduct that is unlawful housing discrimination under section 804 and section 806 of the Fair Housing Act. In general, the prohibited actions are set forth under sections of this subpart which are most applicable to the discriminatory conduct described. However, an action illustrated in one section can constitute a violation under sections in the subpart. For example, the conduct described in § 100.60(b)(3) and (4) would constitute a violation of § 100.65(a) as well as § 100.60(a).*

*(b) It shall be unlawful to:*

*(1) Refuse to sell or rent a dwelling after a bona fide offer has been made, or to refuse to negotiate for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate in the sale or rental of a dwelling because of handicap.*

*(2) Discriminate in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with sales or rentals, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(3) Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.*

*(4) Make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.*

*(5) Represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for sale or rental when such dwelling is in fact available.*

*(6) Engage in blockbusting practices in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin.*

*(7) Deny access to or membership or participation in, or to discriminate against any person in his or her access to or membership or participation in, any multiple-listing service, real estate brokers' association, or other service organization or facility relating to the business of selling or renting a dwelling or in the terms or conditions or membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(c) The application of the Fair Housing Act with respect to persons with handicaps is discussed in subpart D of this part.*

*§ 100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.*

*(a) It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a bona fide offer, because of race, color, religion, sex, familial status, or national origin or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate against any person in the sale or rental of a dwelling because of handicap.*

*(b) Prohibited actions under this section include, but are not limited to:*

*(1) Failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap, familial status, or national origin.*

*(2) Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, or national origin.*

*(3) Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, or national origin.*

*(4) Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(5) Evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.*

*(6) Conditioning the availability of a dwelling, including the price, qualification criteria, or standards or procedures for securing the dwelling, on a person's response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.*

*(7) Subjecting a person to harassment because of race, color, religion, sex, handicap, familial status, or national origin that causes the person to vacate a dwelling or abandon efforts to secure the dwelling.*

*[54 FR 3283, Jan. 23, 1989, as amended at 81 FR 63074, Sept. 14, 2016]*

*§ 100.65 Discrimination in terms, conditions and privileges and in services and facilities.*

*(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.*

*(b) Prohibited actions under this section include, but are not limited to:*

*(1) Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(2) Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status, or national origin.*

*(3) Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, or national origin.*

*(4) Limiting the use of privileges, services or facilities associated with a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of an owner, tenant or a person associated with him or her.*

*(5) Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.*

*(6) Conditioning the terms, conditions, or privileges relating to the sale or rental of a dwelling, or denying or limiting the services or facilities in connection therewith, on a person's response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.*

*(7) Subjecting a person to harassment because of race, color, religion, sex, handicap, familial status, or national origin that has the effect of imposing different terms, conditions, or privileges relating to the sale or rental of a dwelling or denying or limiting services or facilities in connection with the sale or rental of a dwelling.*

*[54 FR 3283, Jan. 23, 1989, as amended at 81 FR 63074, Sept. 14, 2016]*

*§ 100.70 Other prohibited sale and rental conduct.*

*(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.*

*(b) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.*

*(c) Prohibited actions under paragraph (a) of this section, which are generally referred to as unlawful steering practices, include, but are not limited to:*

*(1) Discouraging any person from inspecting, purchasing or renting a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, or because of the race, color, religion, sex, handicap, familial status, or national origin of persons in a community, neighborhood or development.*

*(2) Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin, by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.*

*(3) Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, handicap, familial status, or national origin.*

*(4) Assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(d) Prohibited activities relating to dwellings under paragraph (b) of this section include, but are not limited to:*

*(1) Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.*

*(2) Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, or national origin, or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origin.*

*(3) Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, or national origin.*

*(4) Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, or national origin.*

*(5) Enacting or implementing land-use rules, ordinances, procedures, building codes, permitting rules, policies, or requirements that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.*

*[54 FR 3283, Jan. 23, 1989, as amended at 78 FR 11481, Feb. 15, 2013; 85 FR 60332, Sept. 24, 2020; 85 FR 64025, Oct. 9, 2020; 88 FR 19500, Mar. 31, 2023]*

*§ 100.75 Discriminatory advertisements, statements and notices.*

*(a) It shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.*

*(b) The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling.*

*(c) Discriminatory notices, statements and advertisements include, but are not limited to:*

*(1) Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, or national origin.*

*(2) Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, handicap, familial status, or national origin of such persons.*

*(3) Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, or national origin.*

*(4) Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, or national origin.*

*(d) 24 CFR part 109 provides information to assist persons to advertise dwellings in a nondiscriminatory manner and describes the matters the Department will review in evaluating compliance with the Fair Housing Act and in investigating complaints alleging discriminatory housing practices involving advertising.*

*§ 100.80 Discriminatory representations on the availability of dwellings.*

*(a) It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental.*

*(b) Prohibited actions under this section include, but are not limited to:*

*(1) Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(2) Representing that covenants or other deed, trust or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin preclude the sale or rental of a dwelling to a person.*

*(3) Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, or national origin.*

*(4) Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(5) Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(6) Representing to an applicant that a unit is unavailable because of the applicant's response to a request for a sexual favor or other harassment because of race, color, religion, sex, handicap, familial status, or national origin.*

*[54 FR 3283, Jan. 23, 1989, as amended at 81 FR 63074, Sept. 14, 2016]*

*§ 100.85 Blockbusting.*

*(a) It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.*

*(b) In establishing a discriminatory housing practice under this section it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.*

*(c) Prohibited actions under this section include, but are not limited to:*

*(1) Engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race,*

*color, religion, sex, handicap, familial status, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.*

*(2) Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.*

*§ 100.90 Discrimination in the provision of brokerage services.*

*(a) It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(b) Prohibited actions under this section include, but are not limited to:*

*(1) Setting different fees for access to or membership in a multiple listing service because of race, color, religion, sex, handicap, familial status, or national origin.*

*(2) Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, or national origin.*

*(3) Imposing different standards or criteria for membership in a real estate sales or rental organization because of race, color, religion, sex, handicap, familial status, or national origin.*

*(4) Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(5) Conditioning access to brokerage services on a person's response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.*

*(6) Subjecting a person to harassment because of race, color, religion, sex, handicap, familial status, or national origin that has the effect of discouraging or denying access to brokerage services.*

*[54 FR 3283, Jan. 23, 1989, as amended at 81 FR 63074, Sept. 14, 2016]*

*Subpart C—Discrimination in Residential Real Estate-Related Transactions*



*§ 100.110 Discriminatory practices in residential real estate-related transactions.*

*(a) This subpart provides the Department's interpretation of the conduct that is unlawful housing discrimination under section 805 of the Fair Housing Act.*

*(b) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.*

*§ 100.115 Residential real estate-related transactions.*

*The term residential real estate-related transactions means:*

*(a) The making or purchasing of loans or providing other financial assistance—*

*(1) For purchasing, constructing, improving, repairing or maintaining a dwelling; or*

*(2) Secured by residential real estate; or*

*(b) The selling, brokering or appraising of residential real property.*

*§ 100.120 Discrimination in the making of loans and in the provision of other financial assistance.*

*(a) It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(b) Practices prohibited under this section in connection with a residential real estate-related transaction include, but are not limited to:*

*(1) Failing or refusing to provide to any person information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(2) Providing, failing to provide, or discouraging the receipt of loans or other financial assistance in a manner that discriminates in their denial rate or otherwise discriminates in their availability because of race, color, religion, sex, handicap, familial status, or national origin.*

*(3) Conditioning the availability of a loan or other financial assistance on a person's response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.*

*(4) Subjecting a person to harassment because of race, color, religion, sex, handicap, familial status, or national origin that affects the availability of a loan or other financial assistance.*

*[54 FR 3283, Jan. 23, 1989, as amended at 78 FR 11481, Feb. 15, 2013; 81 FR 63074, Sept. 14, 2016]*

*§ 100.125 Discrimination in the purchasing of loans.*

*(a) It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(b) Unlawful conduct under this section includes, but is not limited to:*

*(1) Purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, handicap, familial status, or national origin of persons in such neighborhoods or communities.*

*(2) Pooling or packaging loans or other debts or securities which relate to, or which are secured by, dwellings differently because of race, color, religion, sex, handicap, familial status, or national origin.*

*(3) Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by, dwellings because of race, color, religion, sex, handicap, familial status, or national origin.*

*(c) This section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, including requirements of Federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status or national origin.*

*§ 100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.*

*(a) It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, or national origin.*

*(b) Unlawful conduct under this section includes, but is not limited to:*

*(1) Using different policies, practices or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, or national origin.*

*(2) Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, cost, duration or other terms or conditions for a loan or other financial assistance for a dwelling or which is secured by residential real estate, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(3) Servicing of loans or other financial assistance with respect to dwellings in a manner that discriminates, or servicing of loans or other financial assistance which are secured by residential real estate in a manner that discriminates, or providing such loans or financial assistance with other terms or conditions that discriminate, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(4) Conditioning an aspect of a loan or other financial assistance to be provided with respect to a dwelling, or the terms or conditions thereof, on a person's response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.*

*(5) Subjecting a person to harassment because of race, color, religion, sex, handicap, familial status, or national origin that has the effect of imposing different terms or conditions for the availability of such loans or other financial assistance.*

*[54 FR 3283, Jan. 23, 1989, as amended at 78 FR 11481, Feb. 15, 2013; 81 FR 63074, Sept. 14, 2016]*

*§ 100.135 Unlawful practices in the selling, brokering, or appraising of residential real property.*

*(a) It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, handicap, familial status, or national origin.*

*(b) For the purposes of this section, the term appraisal means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.*

*(c) Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.*

*(d) Practices which are unlawful under this section include, but are not limited to:*

*(1) Using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin.*

*(2) Conditioning the terms of an appraisal of residential real property in connection with the sale, rental, or financing of a dwelling on a person's response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.*

*[54 FR 3283, Jan. 23, 1989, as amended at 81 FR 63074, Sept. 14, 2016]*

*§ 100.140 General rules.*

*(a) Voluntary self-testing and correction. The report or results of a self-test a lender voluntarily conducts or authorizes are privileged as provided in this subpart if the lender has taken or is taking appropriate corrective action to address likely violations identified by the self-test. Data collection required by law or any governmental authority (federal, state, or local) is not voluntary.*

*(b) Other privileges. This subpart does not abrogate any evidentiary privilege otherwise provided by law.*

*[62 FR 66432, Dec. 18, 1997]*

*§ 100.141 Definitions.*

*As used in this subpart:*

*Lender means a person who engages in a residential real estate-related lending transaction.*

*Residential real estate-related lending transaction means the making of a loan:*

*(1) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or*

*(2) Secured by residential real estate.*

*Self-test means any program, practice or study a lender voluntarily conducts or authorizes which is designed and used specifically to determine the extent or effectiveness of compliance with the Fair Housing Act. The self-test must create data or factual information that is not available and cannot be derived from loan files, application files, or other residential real estate-related lending transaction records. Self-testing includes, but is not limited to, using fictitious credit applicants (testers) or conducting surveys of applicants or customers, nor is it limited to the pre-application stage of loan processing.*

[62 FR 66432, Dec. 18, 1997]

§ 100.142 Types of information.

(a) *The privilege under this subpart covers:*

- (1) *The report or results of the self-test;*
- (2) *Data or factual information created by the self-test;*
- (3) *Workpapers, draft documents and final documents;*
- (4) *Analyses, opinions, and conclusions if they directly result from the self-test report or results.*

(b) *The privilege does not cover:*

- (1) *Information about whether a lender conducted a self-test, the methodology used or scope of the self-test, the time period covered by the self-test or the dates it was conducted;*
- (2) *Loan files and application files, or other residential real estate-related lending transaction records (e.g., property appraisal reports, loan committee meeting minutes or other documents reflecting the basis for a decision to approve or deny a loan application, loan policies or procedures, underwriting standards, compensation records) and information or data derived from such files and records, even if such data has been aggregated, summarized or reorganized to facilitate analysis.*

[62 FR 66432, Dec. 18, 1997]

§ 100.143 Appropriate corrective action.

(a) *The report or results of a self-test are privileged as provided in this subpart if the lender has taken or is taking appropriate corrective action to address likely violations identified by the self-test. Appropriate corrective action is required when a self-test shows it is more likely than not that a violation occurred even though no violation was adjudicated formally.*

(b) *A lender must take action reasonably likely to remedy the cause and effect of the likely violation and must:*

- (1) *Identify the policies or practices that are the likely cause of the violation, such as inadequate or improper lending policies, failure to implement established policies, employee conduct, or other causes; and*
- (2) *Assess the extent and scope of any likely violation, by determining which areas of operation are likely to be affected by those policies and practices, such as stages of the loan application process, types of loans, or the particular branch where the likely violation has occurred.*

*Generally, the scope of the self-test governs the scope of the appropriate corrective action.*

*(c) Appropriate corrective action may include both prospective and remedial relief, except that to establish a privilege under this subpart:*

*(1) A lender is not required to provide remedial relief to a tester in a self-test;*

*(2) A lender is only required to provide remedial relief to an applicant identified by the self-test as one whose rights were more likely than not violated;*

*(3) A lender is not required to provide remedial relief to a particular applicant if the statute of limitations applicable to the violation expired before the lender obtained the results of the self-test or the applicant is otherwise ineligible for such relief.*

*(d) Depending on the facts involved, appropriate corrective action may include, but is not limited to, one or more of the following:*

*(1) If the self-test identifies individuals whose applications were inappropriately processed, offering to extend credit if the applications were improperly denied; compensating such persons for any damages, both out-of-pocket and compensatory;*

*(2) Correcting any institutional policies or procedures that may have contributed to the likely violation, and adopting new policies as appropriate;*

*(3) Identifying, and then training and/or disciplining the employees involved;*

*(4) Developing outreach programs, marketing strategies, or loan products to serve more effectively the segments of the lender's market that may have been affected by the likely violation; and*

*(5) Improving audit and oversight systems to avoid a recurrence of the likely violations.*

*(e) Determination of appropriate corrective action is fact-based. Not every corrective measure listed in paragraph (d) of this section need be taken for each likely violation.*

*(f) Taking appropriate corrective action is not an admission by a lender that a violation occurred.*

*[62 FR 66432, Dec. 18, 1997]*

*§ 100.144 Scope of privilege.*

*The report or results of a self-test may not be obtained or used by an aggrieved person, complainant, department or agency in any:*

*(a) Proceeding or civil action in which a violation of the Fair Housing Act is alleged; or*

*(b) Examination or investigation relating to compliance with the Fair Housing Act.*

*[62 FR 66432, Dec. 18, 1997]*

*§ 100.145 Loss of privilege.*

*(a) The self-test report or results are not privileged under this subpart if the lender or person with lawful access to the report or results:*

*(1) Voluntarily discloses any part of the report or results or any other information privileged under this subpart to any aggrieved person, complainant, department, agency, or to the public; or*

*(2) Discloses the report or results or any other information privileged under this subpart as a defense to charges a lender violated the Fair Housing Act; or*

*(3) Fails or is unable to produce self-test records or information needed to determine whether the privilege applies.*

*(b) Disclosures or other actions undertaken to carry out appropriate corrective action do not cause the lender to lose the privilege.*

*[62 FR 66432, Dec. 18, 1997]*

*§ 100.146 Limited use of privileged information.*

*Notwithstanding § 100.145, the self-test report or results may be obtained and used by an aggrieved person, applicant, department or agency solely to determine a penalty or remedy after the violation of the Fair Housing Act has been adjudicated or admitted. Disclosures for this limited purpose may be used only for the particular proceeding in which the adjudication or admission is made. Information disclosed under this section remains otherwise privileged under this subpart.*

*[62 FR 66433, Dec. 18, 1997]*

*§ 100.147 Adjudication.*

*An aggrieved person, complainant, department or agency that challenges a privilege asserted under § 100.144 may seek a determination of the existence and application of that privilege in:*

*(a) A court of competent jurisdiction; or*

*(b) An administrative law proceeding with appropriate jurisdiction.*

*[62 FR 66433, Dec. 18, 1997]*

§ 100.148 *Effective date.*

*The privilege under this subpart applies to self-tests conducted both before and after January 30, 1998, except that a self-test conducted before January 30, 1998 is not privileged:*

*(a) If there was a court action or administrative proceeding before January 30, 1998, including the filing of a complaint alleging a violation of the Fair Housing Act with the Department or a substantially equivalent state or local agency; or*

*(b) If any part of the report or results were disclosed before January 30, 1998 to any aggrieved person, complainant, department or agency, or to the general public.*

*[62 FR 66433, Dec. 18, 1997]*

*Subpart D—Prohibition Against Discrimination Because of Handicap*

§ 100.200 *Purpose.*

*The purpose of this subpart is to effectuate sections 6 (a) and (b) and 15 of the Fair Housing Amendments Act of 1988.*

§ 100.201 *Definitions.*

*As used in this subpart:*

*Accessible* when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical disabilities. The phrase “readily accessible to and usable by” is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ICC A117.1–2009, ICC/ANSI A117.1–2003, ICC/ANSI A117.1–1998, CABO/ANSI A117.1–1992, ANSI A117.1–1986 (all incorporated by reference, see § 100.201a) or a comparable standard is deemed “accessible” within the meaning of this paragraph.

*Accessible route* means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts. A route that complies with the appropriate requirements of ICC A117.1–2009, ICC/ANSI A117.1–2003, ICC/ANSI A117.1–1998, CABO/ANSI A117.1–1992, ANSI A117.1–1986 (all incorporated by reference, see § 100.201a) or a comparable standard is an “accessible route” within the meaning of this paragraph.

*Building* means a structure, facility or portion thereof that contains or serves one or more dwelling units.



*Building entrance on an accessible route* means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ICC A117.1–2009, ICC/ANSI A117.1–2003, ICC/ANSI A117.1–1998, CABO/ANSI A117.1–1992, ANSI A117.1–1986 (all incorporated by reference, see § 100.201a) or a comparable standard is a “building entrance on an accessible route” within the meaning of this paragraph.

*Common use areas* means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.

*Controlled substance* means any drug or other substance, or immediate precursor included in the definition in section 102 of the Controlled Substances Act (21 U.S.C. 802).

*Covered multifamily dwellings* means buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of 4 or more dwelling units.

*Dwelling unit* means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single-family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

*Entrance* means any access point to a building or portion of a building used by residents for the purpose of entering.

*Exterior* means all areas of the premises outside of an individual dwelling unit.

*First occupancy* means a building that has never before been used for any purpose.

*Ground floor* means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

*Handicap* means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite. As used in this definition:

(a) *Physical or mental impairment* includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting

*one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or*

*(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.*

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

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

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

*(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;*

*(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or*

*(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.*

*Interior means the spaces, parts, components or elements of an individual dwelling unit.*

*Modification means any change to the public or common use areas of a building or any change to a dwelling unit.*

*Premises means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.*

*Public use areas means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.*

*Site means a parcel of land bounded by a property line or a designated portion of a public right or way.*

*[54 FR 3283, Jan. 23, 1989, as amended at 69 FR 18803, Apr. 9, 2004; 73 FR 63615, Oct. 24,*

2008; 85 FR 78962, Dec. 8, 2020]  
§ 100.201a Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at Department of Housing and Urban Development, 451 Seventh Street SW, Room 5240, Washington, DC 20410-0001, telephone number 202-708-2333, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov) or go to [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html). The phone numbers included in this section may also be reached by persons who are deaf or hard of hearing, or have speech disabilities, by dialing 711 via teletype (TTY).

(b) American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036, 212.642.4900, [info@ansi.org](mailto:info@ansi.org). <https://webstore.ansi.org>.

(1) ANSI A117.1-1986, American National Standard for Buildings and Facilities: Providing Accessibility and Usability for Physically Handicapped People, 1986 edition, into §§ 100.201 and 100.205.

(2) [Reserved]

(c) International Code Council (ICC), 500 New Jersey Avenue NW, 6th Floor, Washington, DC 20001-2070, telephone number 1-888-422-7233, <http://www.iccsafe.org/e/category.html>.

(1) CABO/ANSI A117.1-1992, American National Standard: Accessible and Usable Buildings and Facilities, 1992 edition, into §§ 100.201 and 100.205.

(2) ICC/ANSI A117.1-1998, American National Standard: Accessible and Usable Buildings and Facilities, 1998 edition, into §§ 100.201 and 100.205.

(3) ICC/ANSI A117.1-2003, American National Standard: Accessible and Usable Buildings and Facilities, 2003 edition, into §§ 100.201 and 100.205.

(4) ICC A117.1-2009, Accessible and Usable Buildings and Facilities, 2009 edition, approved October 20, 2010, into §§ 100.201 and 100.205.

[85 FR 78962, Dec. 8, 2020]

§ 100.202 General prohibitions against discrimination because of handicap.

(a) It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

(1) That buyer or renter;

*(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or*

*(3) Any person associated with that person.*

*(b) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of —*

*(1) That buyer or renter;*

*(2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or*

*(3) Any person associated with that person.*

*(c) It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:*

*(1) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;*

*(2) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;*

*(3) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;*

*(4) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;*

*(5) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.*

*(d) Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.*

*§ 100.203 Reasonable modifications of existing premises.*

*(a) It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a*

*handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest-bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.*

*(b) A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.*

*(c) The application of paragraph (a) of this section may be illustrated by the following examples:*

*Example (1):*

*A tenant with a handicap asks his or her landlord for permission to install grab bars in the bathroom at his or her own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the landlord to refuse to permit the tenant, at the tenant's own expense, from making the modifications necessary to add the grab bars. However, the landlord may condition permission for the modification on the tenant agreeing to restore the bathroom to the condition that existed before the modification, reasonable wear and tear excepted. It would be reasonable for the landlord to require the tenant to remove the grab bars at the end of the tenancy. The landlord may also reasonably require that the wall to which the grab bars are to be attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the landlord to require the tenant to remove the blocking, since the reinforced walls will not interfere in any way with the landlord's or the next tenant's use and enjoyment of the premises and may be needed by some future tenant.*

*Example (2):*

*An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway at the applicant's own expense. It is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may not, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises.*

*§ 100.204 Reasonable accommodations.*

*(a) It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.*

*(b) The application of this section may be illustrated by the following examples:*

*Example (1):*

*A blind applicant for rental housing wants live in a dwelling unit with a seeing eye dog. The building has a no pets policy. It is a violation of § 100.204 for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.*

*Example (2):*

*Progress Gardens is a 300-unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a first come first served basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of § 100.204 for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.*

*§ 100.205 Design and construction requirements.*

*(a) Covered multifamily dwellings for first occupancy after March 13, 1991 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if the dwelling is occupied by that date, or if the last building permit or renewal thereof for the dwelling is issued by a State, County or local government on or before June 15, 1990. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.*

*(b) The application of paragraph (a) of this section may be illustrated by the following examples:*

*Example (1):*

*A real estate developer plans to construct six covered multifamily dwelling units on a site with a*

*hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter the dwellings. Since there is no practical way to provide an accessible route to any of the dwellings, one need not be provided.*

*Example (2):*

*A real estate developer plans to construct a building consisting of 10 units of multifamily housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.*

*Example (3):*

*A real estate developer plans to construct a multifamily housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible. Because of the configuration and terrain of the site, it is possible to construct a building with 105 units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route leading to the building entrance. However, such a building would have no more than 100 dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.*

*(c) All covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route shall be designed and constructed in such a manner that—*

*(1) The public and common use areas are readily accessible to and usable by handicapped persons;*

*(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and*

*(3) All premises within covered multifamily dwelling units contain the following features of adaptable design:*

*(i) An accessible route into and through the covered dwelling unit;*

*(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;*

*(iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and*

*(iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about*

the space.

*(d) The application of paragraph (c) of this section may be illustrated by the following examples:*

*Example (1):*

*A developer plans to construct a 100-unit condominium apartment building with one elevator. In accordance with paragraph (a), the building has at least one accessible route leading to an accessible entrance. All 100 units are covered multifamily dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of paragraph (c) of this section.*

*Example (2):*

*A developer plans to construct 30 garden apartments in a three-story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the ground floor units are covered multifamily units. The ground floor is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of paragraph (c) of this section and must have access to at least one of each type of public or common use area available for residents in the building.*

*(e)*

*(1) Compliance with the appropriate requirements of ICC A117.1–2009, ICC/ANSI A117.1–2003, ICC/ANSI A117.1–1998, CABO/ANSI A117.1–1992, or ANSI A117.1–1986 (all incorporated by reference, see § 100.201a), or suffices to satisfy the requirements of paragraph (c)(3) of this section.*

*(2) The following also qualify as HUD-recognized safe harbors for compliance with the Fair Housing Act design and construction requirements:*

*(i) Fair Housing Accessibility Guidelines, March 6, 1991, in conjunction with the Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, June 28, 1994;*

*(ii) Fair Housing Act Design Manual, published by HUD in 1996, updated in 1998;*

*(iii) 2000 ICC Code Requirements for Housing Accessibility (CRHA), published by the International Code Council (ICC), October 2000 (with corrections contained in ICC-issued errata sheet), if adopted without modification and without waiver of any of the provisions;*

*(iv) 2000 International Building Code (IBC), as amended by the 2001 Supplement to the International Building Code (2001 IBC Supplement), if adopted without modification and without waiver of any of the provisions intended to address the Fair Housing Act's design and construction requirements;*



*(v) 2003 International Building Code (IBC), if adopted without modification and without waiver of any of the provisions intended to address the Fair Housing Act's design and construction requirements, and conditioned upon the ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, "ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7."*

*(vi) 2006 International Building Code; published by ICC, January 2006, with the January 31, 2007, erratum to correct the text missing from Section 1107.7.5, if adopted without modification and without waiver of any of the provisions intended to address the Fair Housing Act's design and construction requirements, and interpreted in accordance with the relevant 2006 IBC Commentary;*

*(vii) 2009 International Building Code, published by ICC (<http://www.iccsafe.org>), and interpreted in accordance with the relevant 2009 IBC Commentary;*

*(viii) 2012 International Building Code, published by ICC (<http://www.iccsafe.org>), and interpreted in accordance with the relevant 2012 IBC Commentary;*

*(ix) 2015 International Building Code, published by ICC (<http://www.iccsafe.org>), and interpreted in accordance with the relevant 2015 IBC Commentary; and*

*(x) 2018 International Building Code, published by ICC (<http://www.iccsafe.org>), and interpreted in accordance with the relevant 2018 IBC Commentary.*

*(3) HUD may propose safe harbors by Federal Register notification that provides for a minimum of 30 days public comment period. HUD will publish a final notification announcing safe harbors after considering public comments. Compliance with safe harbors established by Federal Register notification will satisfy the requirements of paragraphs (a) and (c) of this section.*

*(f) Compliance with a duly enacted law of a State or unit of general local government that includes the requirements of paragraphs (a) and (c) of this section satisfies the requirements of paragraphs (a) and (c) of this section.*

*(g)*

*(1) It is the policy of HUD to encourage States and units of general local government to include, in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a) and (c) of this section.*

*(2) A State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) of this section are met.*

*(h) Determinations of compliance or noncompliance by a State or a unit of general local government under paragraph (f) or (g) of this section are not conclusive in enforcement proceedings under the Fair Housing Amendments Act.*

*(i) This subpart does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart.*

*[54 FR 3283, Jan. 23, 1989, as amended at 56 FR 11665, Mar. 20, 1991; 73 FR 63616, Oct. 24, 2008; 85 FR 78963, Dec. 8, 2020]*

#### *Subpart E—Housing for Older Persons*

##### *§ 100.300 Purpose.*

*The purpose of this subpart is to effectuate the exemption in the Fair Housing Amendments Act of 1988 that relates to housing for older persons.*

##### *§ 100.301 Exemption.*

*(a) The provisions regarding familial status in this part do not apply to housing which satisfies the requirements of §§ 100.302, 100.303 or § 100.304.*

*(b) Nothing in this part limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.*

##### *§ 100.302 State and Federal elderly housing programs.*

*The provisions regarding familial status in this part shall not apply to housing provided under any Federal or State program that the Secretary determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program.*

##### *§ 100.303 62 or over housing.*

*(a) The provisions regarding familial status in this part shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:*

*(1) There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;*

*(2) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over;*

*(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.*

*(b) The following examples illustrate the application of paragraph (a) of this section:*

*Example (1):*

*John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its "62 or over" exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the "55 or over" exemption in § 100.304.*

*Example (2):*

*The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the "62 or over" exemption as long as all units that were occupied after September 13, 1988 are occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave for Blueberry Hill to qualify for the "62 or over" exemption.*

*§ 100.304 Housing for persons who are 55 years of age or older.*

*(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for persons 55 years of age or older. Housing qualifies for this exemption if:*

*(1) The alleged violation occurred before December 28, 1995 and the housing community or facility complied with the HUD regulations in effect at the time of the alleged violation; or*

*(2) The alleged violation occurred on or after December 28, 1995 and the housing community or facility complies with:*

*(i) Section 807(b)(2)(C) (42 U.S.C. 3607(b)) of the Fair Housing Act as amended; and*

*(ii) 24 CFR 100.305, 100.306, and 100.307.*

*(b) For purposes of this subpart, housing facility or community means any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:*

*(1) A condominium association;*

*(2) A cooperative;*

*(3) A property governed by a homeowners' or resident association;*

*(4) A municipally zoned area;*

*(5) A leased property under common private ownership;*

*(6) A mobile home park; and*

*(7) A manufactured housing community.*

*(c) For purposes of this subpart, older person means a person 55 years of age or older.*

*[64 FR 16329, Apr. 2, 1999]*

*§ 100.305 80 percent occupancy.*

*(a) In order for a housing facility or community to qualify as housing for older persons under § 100.304, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.*

*(b) For purposes of this subpart, occupied unit means:*

*(1) A dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed; or*

*(2) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.*

*(c) For purposes of this subpart, occupied by at least one person 55 years of age or older means that on the date the exemption for housing designed for persons who are 55 years of age or older is claimed:*

*(1) At least one occupant of the dwelling unit is 55 years of age or older; or*

*(2) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was 55 years of age or older.*

*(d) Newly constructed housing for first occupancy after March 12, 1989 need not comply with the requirements of this section until at least 25 percent of the units are occupied. For purposes of this section, newly constructed housing includes a facility or community that has been wholly unoccupied for at least 90 days prior to re-occupancy due to renovation or rehabilitation.*

*(e) Housing satisfies the requirements of this section even though:*

*(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility or community were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the units occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.*

*(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.*

*(3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.*

*(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by § 100.204 and who are under the age of 55.*

*(5) For a period expiring one year from the effective date of this final regulation, there are insufficient units occupied by at least one person 55 years of age or older, but the housing facility or community, at the time the exemption is asserted:*

*(i) Has reserved all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and*

*(ii) Meets the requirements of §§ 100.304, 100.306, and 100.307.*

*(f) For purposes of the transition provision described in § 100.305(e)(5), a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children who reside in the facility or community in order to achieve occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older.*

*(g) Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.*

*(h) Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one person 55 years of age or older, so long as the housing facility or community complies with the provisions of § 100.306.*

*[64 FR 16329, Apr. 2, 1999]*

*§ 100.306 Intent to operate as housing designed for persons who are 55 years of age or older.*

*(a) In order for a housing facility or community to qualify as housing designed for persons who are 55 years of age or older, it must publish and adhere to policies and procedures that*

*demonstrate its intent to operate as housing for persons 55 years of age or older. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:*

- (1) The manner in which the housing facility or community is described to prospective residents;*
- (2) Any advertising designed to attract prospective residents;*
- (3) Lease provisions;*
- (4) Written rules, regulations, covenants, deed or other restrictions;*
- (5) The maintenance and consistent application of relevant procedures;*
- (6) Actual practices of the housing facility or community; and*
- (7) Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.*

*(b) Phrases such as “adult living”, “adult community”, or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons 55 years of age or older.*

*(c) If there is language in deed or other community or facility documents which is inconsistent with the intent to provide housing for persons who are 55 years of age or older housing, HUD shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section in conjunction with other evidence of intent.*

*(d) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of §§ 100.305 and 100.306(a).*

*(Approved by the Office of Management and Budget under control number 2529–0046)*

*[64 FR 16330, Apr. 2, 1999]*

*§ 100.307 Verification of occupancy.*

*(a) In order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance with § 100.305 through reliable surveys and affidavits.*

*(b) A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.*

*(c) The procedures described in paragraph (b) of this section must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years. A survey may include information regarding whether any units are occupied by persons described in paragraphs (e)(1), (e)(3), and (e)(4) of § 100.305.*

*(d) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:*

*(1) Driver's license;*

*(2) Birth certificate;*

*(3) Passport;*

*(4) Immigration card;*

*(5) Military identification;*

*(6) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or*

*(7) A certification in a lease, application, affidavit, or other document signed by any member of the household age 18 or older asserting that at least one person in the unit is 55 years of age or older.*

*(e) A facility or community shall consider any one of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth.*

*(f) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.*

*(g) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person 55 years of age or older. Such evidence may include:*

*(1) Government records or documents, such as a local household census;*

*(2) Prior forms or applications; or*

*(3) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.*

*(h) Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.*

*(i) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.*

*(Approved by the Office of Management and Budget under control number 2529–0046)*

*[64 FR 16330, Apr. 2, 1999]*

*§ 100.308 Good faith defense against civil money damages.*

*(a) A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility or community qualified for a housing for older persons exemption under this subpart.*

*(b)*

*(1) A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies for a housing for older persons exemption.*

*(2) Before the date on which the discrimination is claimed to have occurred, a community or facility, through its authorized representatives, must certify, in writing and under oath or affirmation, to the person subsequently claiming the defense that it complies with the requirements for such an exemption as housing for persons 55 years of age or older in order for such person to claim the defense.*

*(3) For purposes of this section, an authorized representative of a housing facility or community means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established by this subpart.*

*(4) For purposes of this section, a person means a natural person.*

*(5) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as housing for persons 55 years of age or older. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in paragraph (b) of this section.*

*[64 FR 16330, Apr. 2, 1999]*

*Subpart F—Interference, Coercion or Intimidation*

*§ 100.400 Prohibited interference, coercion or intimidation.*

*(a) This subpart provides the Department's interpretation of the conduct that is unlawful under*



*section 818 of the Fair Housing Act.*

*(b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.*

*(c) Conduct made unlawful under this section includes, but is not limited to, the following:*

*(1) Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin.*

*(2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons.*

*(3) Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, handicap, familial status, or national origin of that person or of any person associated with that person.*

*(4) Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this part.*

*(5) Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Housing Act.*

*(6) Retaliating against any person because that person reported a discriminatory housing practice to a housing provider or other authority.*

*[54 FR 3283, Jan. 23, 1989, as amended at 81 FR 63075, Sept. 14, 2016]*

*Subpart G—Discriminatory Effect*

*§ 100.500 Discriminatory effect prohibited.*

*Liability may be established under the Fair Housing Act based on a practice's discriminatory effect, as defined in paragraph (a) of this section, even if the practice was not motivated by a discriminatory intent. The practice may still be lawful if supported by a legally sufficient justification, as defined in paragraph (b) of this section. The burdens of proof for establishing a violation under this subpart are set forth in paragraph (c) of this section.*

*(a) Discriminatory effect. A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.*

*(b) Legally sufficient justification.*

*(1) A legally sufficient justification exists where the challenged practice:*

*(i) Is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent, with respect to claims brought under 42 U.S.C. 3612, or defendant, with respect to claims brought under 42 U.S.C. 3613 or 3614; and*

*(ii) Those interests could not be served by another practice that has a less discriminatory effect.*

*(2) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative. The burdens of proof for establishing each of the two elements of a legally sufficient justification are set forth in paragraphs (c)(2) and (3) of this section.*

*(c) Burdens of proof in discriminatory effects cases.*

*(1) The charging party, with respect to a claim brought under 42 U.S.C. 3612, or the plaintiff, with respect to a claim brought under 42 U.S.C. 3613 or 3614, has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.*

*(2) Once the charging party or plaintiff satisfies the burden of proof set forth in paragraph (c)(1) of this section, the respondent or defendant has the burden of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant.*

*(3) If the respondent or defendant satisfies the burden of proof set forth in paragraph (c)(2) of this section, the charging party or plaintiff may still prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.*

*(d) Relationship to discriminatory intent. A demonstration that a practice is supported by a legally sufficient justification, as defined in paragraph (b) of this section, may not be used as a defense against a claim of intentional discrimination.*

*[88 FR 19500, Mar. 31, 2023]*

*Subpart H— Quid Pro Quo and Hostile Environment Harassment*

*Source:*

*81 FR 63075, Sept. 14, 2016, unless otherwise noted.*

§ 100.600 *Quid pro quo and hostile environment harassment.*

(a) *General. Quid pro quo and hostile environment harassment because of race, color, religion, sex, familial status, national origin or handicap may violate sections 804, 805, 806 or 818 of the Act, depending on the conduct. The same conduct may violate one or more of these provisions.*

(1) *Quid pro quo harassment. Quid pro quo harassment refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to: The sale, rental or availability of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction. An unwelcome request or demand may constitute quid pro quo harassment even if a person acquiesces in the unwelcome request or demand.*

(2) *Hostile environment harassment. Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with: The availability, sale, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision or enjoyment of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction. Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities, or of the residential real-estate transaction.*

(i) *Totality of the circumstances. Whether hostile environment harassment exists depends upon the totality of the circumstances.*

(A) *Factors to be considered to determine whether hostile environment harassment exists include, but are not limited to, the nature of the conduct, the context in which the incident(s) occurred, the severity, scope, frequency, duration, and location of the conduct, and the relationships of the persons involved.*

(B) *Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists. Evidence of psychological or physical harm may, however, be relevant in determining whether a hostile environment existed and, if so, the amount of damages to which an aggrieved person may be entitled.*

(C) *Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is evaluated from the perspective of a reasonable person in the aggrieved person's position.*

(ii) *Title VII affirmative defense. The affirmative defense to an employer's vicarious liability for hostile environment harassment by a supervisor under Title VII of the Civil Rights Act of 1964 does not apply to cases brought pursuant to the Fair Housing Act.*

(b) *Type of conduct. Harassment can be written, verbal, or other conduct, and does not require physical contact.*

*(c) Number of incidents. A single incident of harassment because of race, color, religion, sex, familial status, national origin, or handicap may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a hostile environment, or evidences a quid pro quo.*

*24 CFR Subpart A—Generally Applicable Definitions and Requirements; Waivers*

*§ 5.100 Definitions.*

*Cross Reference*

*Link to an amendment published at 88 FR 9654, Feb. 14, 2023.*

*The following definitions apply to this part and also in other regulations, as noted:*

*1937 Act means the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.)*

*ADA means the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).*

*ALJ means an administrative law judge appointed to HUD pursuant to 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344.*

*Broadband infrastructure means cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure, including wireless infrastructure, that is capable of providing access to Internet connections in individual housing units, and that meets the definition of “advanced telecommunications capability” determined by the Federal Communications Commission under section 706 of the Telecommunications Act of 1996 (47 U.S.C. 1302).*

*Covered person, for purposes of 24 CFR 5, subpart I, and parts 966 and 982, means a tenant, any member of the tenant's household, a guest or another person under the tenant's control.*

*Department means the Department of Housing and Urban Development.*

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

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

*Elderly Person means an individual who is at least 62 years of age.*

*Fair Housing Act means title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 et seq.).*

*Fair Market Rent (FMR) means the rent that would be required to be paid in the particular housing market area in order to obtain privately owned, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. This Fair Market Rent includes utilities*

*(except telephone). Separate Fair Market Rents will be established by HUD for dwelling units of varying sizes (number of bedrooms) and will be published in the Federal Register in accordance with part 888 of this title.*

*Family has the meaning provided this term in § 5.403, and applies to all HUD programs unless otherwise provided in the regulations for a specific HUD program.*

*Federally assisted housing (for purposes of subparts I and J of this part) means housing assisted under any of the following programs:*

*(1) Public housing;*

*(2) Housing receiving project-based or tenant-based assistance under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f);*

*(3) Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (12 U.S.C. 1701q);*

*(4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;*

*(5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);*

*(6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715l(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715l(d)(5));*

*(7) Housing insured, assisted, or held by HUD or by a State or local agency under section 236 of the National Housing Act (12 U.S.C. 1715z-1); or*

*(8) Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484).*

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

*General Counsel means the General Counsel of HUD.*

*Grantee means the person or legal entity to which a grant is awarded and that is accountable for the use of the funds provided.*

*Guest, only for purposes of 24 CFR part 5, subparts A and I, and parts 882, 960, 966, and 982,*

*means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. The requirements of parts 966 and 982 apply to a guest as so defined.*

*Homeownership counseling means housing counseling related to homeownership and residential mortgage loans when provided in connection with HUD's Housing Counseling Program, or required by or provided in connection with HUD Programs as defined in § 5.111. Homeownership counseling is housing counseling that covers the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including financing, refinancing, default, and foreclosure, and other financial decisions) and the sale or other disposition of a home.*

*Household, for purposes of 24 CFR part 5, subpart I, and parts, 960, 966, 882, and 982, means the family and PHA-approved live-in aide.*

*Housing counseling is independent, expert advice customized to the need of the consumer to address the consumer's housing barriers and to help achieve their housing goals and must include the following processes: Intake; financial and housing affordability analysis; an action plan, except for reverse mortgage counseling; and a reasonable effort to have follow-up communication with the client when possible. The content and process of housing counseling must meet the standards outlined in 24 CFR part 214. Homeownership counseling and rental counseling are types of housing counseling.*

*HUD means the same as Department.*

*MSA means a metropolitan statistical area.*

*NAHA means the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 et seq.).*

*NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321).*

*NOFA means Notice of Funding Availability.*

*OMB means the Office of Management and Budget.*

*Organizational Unit means the jurisdictional area of each Assistant Secretary, and each office head or field administrator reporting directly to the Secretary.*

*Other person under the tenant's control, for the purposes of the definition of covered person and for parts 5, 882, 966, and 982 means that the person, although not staying as a guest (as defined in this section) in the unit, is, or was at the time of the activity in question, on the premises (as premises is defined in this section) because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not under the tenant's control.*

*Premises, for purposes of 24 CFR part 5, subpart I, and parts 960 and 966, means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.*

*Public housing means housing assisted under the 1937 Act, other than under Section 8. "Public housing" includes dwelling units in a mixed finance project that are assisted by a PHA with capital or operating assistance.*

*Public Housing Agency (PHA) means any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.*

*Rental housing counseling means counseling related to the rental of residential property, which may include counseling regarding future homeownership opportunities when provided in connection with HUD's Housing Counseling Program, or required under or provided in connection with HUD Programs as defined in § 5.111. Rental housing counseling may also include the decision to rent, responsibilities of tenancy, affordability of renting and eviction prevention.*

*Responsible entity means:*

*(1) For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), and the Section 8 project-based certificate or voucher programs (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), responsible entity means the PHA administering the program under an ACC with HUD;*

*(2) For all other Section 8 programs, responsible entity means the Section 8 project owner.*

*Section 8 means section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).*

*Secretary means the Secretary of Housing and Urban Development.*

*Sexual orientation means one's emotional or physical attraction to the same and/or opposite sex (e.g., homosexuality, heterosexuality, or bisexuality).*

*Substantial rehabilitation, for the purposes of determining when installation of broadband infrastructure is required as part of substantial rehabilitation of multifamily rental housing, unless otherwise defined by a program, means work that involves:*

*(1) Significant work on the electrical system of the multifamily rental housing. "Significant work" means complete replacement of the electrical system or other work for which the pre-construction cost estimate is equal to or greater than 75 percent of the cost of replacing the entire electrical system. In the case of multifamily rental housing with multiple buildings with more than 4 units, "entire system" refers to the electrical system of the building undergoing rehabilitation; or*

(2) *Rehabilitation of the multifamily rental housing in which the pre-construction estimated cost of the rehabilitation is equal to or greater than 75 percent of the total estimated cost of replacing the multifamily rental housing after the rehabilitation is complete. In the case of multifamily rental housing with multiple buildings with more than 4 units, the replacement cost must be the replacement cost of the building undergoing rehabilitation.*

*URA means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4201–4655).*

*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.*

*[61 FR 5202, Feb. 9, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 65 FR 16715, Mar. 29, 2000; 66 FR 28791, May 24, 2001; 77 FR 5674, Feb. 3, 2012; 81 FR 64782, Sept. 21, 2016; 81 FR 90657, Dec. 14, 2016; 81 FR 92635, Dec. 20, 2016]*

*§ 5.105 Other Federal requirements.*

*The requirements set forth in this section apply to all HUD programs, except as may be otherwise noted in the respective program regulations in title 24 of the CFR, or unless inconsistent with statutes authorizing certain HUD programs:*

*(a) Nondiscrimination and equal opportunity.*

*(1) The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 et seq.; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.; 24 CFR part 8; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).*



*(2) Equal access to HUD-assisted or -insured housing. A determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by HUD shall be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.*

*(b) Disclosure requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 CFR part 87; and the requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 et seq.).*

*(c) Debarred, suspended, or ineligible contractors and participants. The prohibitions at 2 CFR part 2424 on the use of debarred, suspended, or ineligible contractors and participants.*

*(d) Drug-free workplace. The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, et seq.) and HUD's implementing regulations at 2 CFR part 2429.*

*[61 FR 5202, Feb. 9, 1996, as amended at 65 FR 16715, Mar. 29, 2000; 72 FR 73491, Dec. 27, 2007; 76 FR 45167, July 28, 2011; 77 FR 5674, Feb. 3, 2012; 81 FR 64782, Sept. 21, 2016; 81 FR 80993, Nov. 17, 2016; 85 FR 61562, Sept. 29, 2020]*

*§ 5.106 Equal access in accordance with the individual's gender identity in community planning and development programs.*

*(a) Applicability. This section applies to assistance provided under Community Planning and Development (CPD) programs, including assistance under the following CPD programs: HOME Investment Partnerships program (24 CFR part 92), Housing Trust Fund program (24 CFR part 93), Community Development Block Grant program (24 CFR part 570), Housing Opportunities for Persons With AIDS program (24 CFR part 574), Emergency Solutions Grants program (24 CFR part 576), Continuum of Care program (24 CFR part 578), or Rural Housing Stability Assistance Program (24 CFR part 579). The requirements of this section apply to recipients and subrecipients, as well as to owners, operators, and managers of shelters and other buildings and facilities and providers of services funded in whole or in part by any CPD program.*

*(b) Equal access in accordance with gender identity. The admissions, occupancy, and operating policies and procedures of recipients, subrecipients, owners, operators, managers, and providers identified in paragraph (a) of this section, including policies and procedures to protect privacy, health, safety, and security, shall be established or amended, as necessary, and administered in a nondiscriminatory manner to ensure that:*

*(1) Equal access to CPD programs, shelters, other buildings and facilities, benefits, services, and accommodations is provided to an individual in accordance with the individual's gender identity, and in a manner that affords equal access to the individual's family;*

*(2) An individual is placed, served, and accommodated in accordance with the gender identity of the individual;*

*(3) An individual is not subjected to intrusive questioning or asked to provide anatomical information or documentary, physical, or medical evidence of the individual's gender identity; and*

*(4) Eligibility determinations are made and assisted housing is made available in CPD programs as required by § 5.105(a)(2).*

*(c) Placement and accommodation in temporary, emergency shelters and other buildings and facilities with shared sleeping quarters or shared bathing facilities —*

*(1) Placement and accommodation. Placement and accommodation of an individual in temporary, emergency shelters and other buildings and facilities with physical limitations or configurations that require and are permitted to have shared sleeping quarters or shared bathing facilities shall be made in accordance with the individual's gender identity.*

*(2) Post-admission accommodations. A recipient, subrecipient, owner, operator, manager, or provider must take nondiscriminatory steps that may be necessary and appropriate to address privacy concerns raised by residents or occupants and, as needed, update its admissions, occupancy, and operating policies and procedures in accordance with paragraph (b) of this section.*

*(d) Documentation and record retention. Providers shall document and maintain records of compliance with the requirements in paragraph (b) of this section for a period of 5 years.*

*[81 FR 64782, Sept. 21, 2016]*

*§ 5.107 Audit requirements for non-profit organizations.*

*Non-profit organizations subject to regulations in the part 200 and part 800 series of title 24 of the CFR shall comply with the audit requirements of 2 CFR part 200, subpart F. For HUD programs, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.*

*[62 FR 61617, Nov. 18, 1997, as amended at 80 FR 75934, Dec. 7, 2015]*

*§ 5.109 Equal participation of faith-based organizations in HUD programs and activities.*

*(a) Purpose. Consistent with Executive Order 13279, entitled "Equal Protection of the Laws for Faith-Based and Community Organizations," as amended by Executive Order 13559, entitled "Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations," and as amended by Executive Order 13831, entitled "Establishment of a White House Faith and Opportunity Initiative," this section describes requirements for ensuring the equal participation of faith-based organizations in HUD programs and activities. These requirements apply to all HUD programs and activities, including all of*

*HUD's Native American Programs, except as may be otherwise noted in the respective program regulations in title 24 of the Code of Federal Regulations (CFR), or unless inconsistent with certain HUD program authorizing statutes.*

*(b) Definitions. The following definitions apply to this section:*

*Direct Federal financial assistance means Federal financial assistance provided when a Federal Government agency or an intermediary, as defined in this section, selects the provider and either purchases services from that provider (i.e., via a contract) or awards funds to that provider to carry out an activity (e.g., via grant, sub-grant, sub-award, or cooperative agreement). The recipients of sub-grants or sub-awards that receive Federal financial assistance through State-administered programs (e.g., flow-through programs) are considered recipients of direct Federal financial assistance. In general, Federal financial assistance shall be treated as direct, unless it meets the definition of indirect Federal financial assistance.*

*Federal financial assistance means assistance that non-Federal entities receive or administer in the forms of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.*

*Indirect Federal financial assistance means Federal financial assistance provided when the choice of the provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of Government-funded payment. Federal financial assistance provided to an organization is considered indirect when the Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion meaning that it is available to providers without regard to the religious or non-religious nature of the institution and there are no program incentives that deliberately skew for or against religious or secular providers; and the organization receives the assistance as a result of a genuine, independent choice of the beneficiary.*

*Intermediary means an entity, including a nongovernmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State, tribal or local government that accepts Federal financial assistance and distributes that assistance to other entities that, in turn, carry out activities under HUD programs.*

*Religious exercise has the meaning given to the term in 42 U.S.C. 2000cc-5(7)(A).*

*(c) Equal participation of faith-based organizations in HUD programs and activities. Faith-based organizations are eligible, on the same basis as any other organization, to participate in any HUD program or activity, considering any permissible accommodations, particularly under the Religious Freedom Restoration Act. Neither the Federal Government, nor a State, tribal or local government, nor any other entity that administers any HUD program or activity, shall discriminate against an organization on the basis of the organization's religious character, affiliation, or lack thereof, or on the basis of the organization's religious exercise. For purposes of this part, to discriminate against an organization on the basis of the organization's religious*

*exercise means to disfavor an organization, including by failing to select an organization, disqualifying an organization, or imposing any condition or selection criterion that otherwise disfavors or penalizes an organization in the selection process or has such an effect:*

*(1) Because of conduct that would not be considered grounds to disfavor a secular organization;*

*(2) Because of conduct that must or could be granted an appropriate accommodation in a manner consistent with RFRA (42 U.S.C. 2000bb through 2000bb-4) or the Religion Clauses of the First Amendment to the Constitution; or*

*(3) Because of the actual or suspected religious motivation of the organization's religious exercise.*

*(4) In addition, decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not based on the organization's religious character, affiliation, or lack thereof, or based on the organization's religious exercise. Notices of funding availability, grant agreements, and cooperative agreements shall include language substantially similar to that in appendix A to this subpart, where faith-based organizations are eligible for such opportunities.*

*(d) Independence and identity of faith-based organizations.*

*(1) A faith-based organization that applies for, or participates in, a HUD program or activity supported with Federal financial assistance retains its autonomy, right of expression, religious character, authority over its governance, and independence, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs. A faith-based organization that receives Federal financial assistance from HUD does not lose the protections of law.*

*Note 1 to paragraph (d)(1):*

*Memorandum for All Executive Departments and Agencies, From the Attorney General, "Federal Law Protections for Religious Liberty" (Oct. 6, 2017) (describing Federal law protections for religious liberty).*

*(2) A faith-based organization that receives direct Federal financial assistance may use space (including a sanctuary, chapel, prayer hall, or other space) in its facilities (including a temple, synagogue, church, mosque, or other place of worship) to carry out activities under a HUD program without concealing, altering, or removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization participating in a HUD program or activity retains its authority over its internal governance, and may retain religious terms in its organization's name, select its board members and employees on the basis of their acceptance of or adherence to the religious tenets of the organization consistent with paragraph (i) of this section), and include religious references in its organization's mission statements and other governing documents.*

*(e) Explicitly religious activities. If an organization engages in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), the explicitly religious activities must be offered separately, in time or location, from the programs or activities supported by direct Federal financial assistance and participation must be voluntary for the beneficiaries of the programs or activities that receive direct Federal financial assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts HUD's authority under applicable Federal law to fund activities, that can be directly funded by the Government consistent with the Establishment Clause of the U.S. Constitution.*

*(f) Intermediary responsibilities to ensure equal participation of faith-based organizations in HUD programs. If an intermediary—acting under a contract, grant, or other agreement with the Federal Government or with a State, tribal or local government that is administering a program supported by Federal financial assistance—is given the authority to select a nongovernmental organization to receive Federal financial assistance under a contract, grant, sub-grant, sub-award, or cooperative agreement, the intermediary must ensure that such organization complies with the requirements of this section. If the intermediary is a nongovernmental organization, it retains all other rights of a nongovernmental organization under the program's statutory and regulatory provisions.*

*(g) Nondiscrimination requirements. Any organization that receives Federal financial assistance under a HUD program or activity shall not, in providing services with such assistance or carrying out activities with such assistance, discriminate against a beneficiary or prospective beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect Federal financial assistance need not modify its program or activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program and may require attendance at all activities that are fundamental to the program.*

*(h) No additional assurances from faith-based organizations. A faith-based organization is not rendered ineligible by its religious nature to access and participate in HUD programs. Absent regulatory or statutory authority, no notice of funding availability, grant agreement, cooperative agreement, covenant, memorandum of understanding, policy, or regulation that is used by HUD or a recipient or intermediary in administering Federal financial assistance from HUD shall require otherwise eligible faith-based organizations to provide assurances or notices where they are not required of similarly situated secular organizations. All organizations that participate in HUD programs or activities, including organizations with religious character or affiliations, must carry out eligible activities in accordance with all program requirements, subject to any required or appropriate accommodation, particularly under the Religious Freedom Restoration Act, and other applicable requirements governing the conduct of HUD-funded activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities. No notice of funding availability, grant agreement, cooperative agreement, covenant, memorandum of understanding, policy, or regulation that is used by HUD or a recipient or intermediary in administering financial assistance from HUD shall disqualify otherwise eligible faith-based organizations from participating in HUD's programs or activities because such*

organization is motivated or influenced by religious faith to provide such programs and activities, or because of its religious character or affiliation, or on grounds that discriminate against an organization on the basis of the organization's religious exercise, as defined in this part.

(i) *Exemption from Title VII employment discrimination requirements.* A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

(j) *Acquisition, construction, and rehabilitation of structures.* Direct Federal financial assistance may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under a HUD program or activity. Where a structure is used for both eligible and explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), direct Federal financial assistance may not exceed the cost of the share of acquisition, construction, or rehabilitation attributable to eligible activities in accordance with the cost accounting requirements applicable to the HUD program or activity. However, acquisition, construction, or rehabilitation of sanctuaries, chapels, or other rooms that a HUD-funded faith-based organization uses as its principal place of worship, may not be paid with direct Federal financial assistance. Disposition of real property by a faith-based organization after its use for an authorized purpose, or any change in use of the property from an authorized purpose, is subject to Government-wide regulations governing real property disposition (2 CFR part 200, subpart D) and the HUD program regulations, as directed by HUD.

(k) *Commingling of Federal and State, tribal, and local funds.* If a State, tribal, or local government voluntarily contributes its own funds to supplement direct Federal financial assistance for an activity, the State, tribal or local government has the option to segregate those funds or commingle them with the direct Federal financial assistance. However, if the funds are commingled, the requirements of this section apply to all of the commingled funds. Further, if a State, tribal, or local government is required to contribute matching funds to supplement direct Federal financial assistance for an activity, the matching funds are considered commingled with the direct Federal financial assistance and, therefore, subject to the requirements of this section. Some HUD programs' requirements govern any activity assisted under those programs. Accordingly, recipients should consult with the appropriate HUD program office to determine the scope of applicable requirements.

(l) *Tax exempt organizations.* In general, HUD does not require that a recipient, including a faith-based organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under HUD programs. Many grant programs, however, do require an organization to be a nonprofit organization in order to be eligible for funding. Notices of funding availability that require organizations to have nonprofit status will specifically so indicate in the eligibility section of the notice of funding availability. In addition,

*if any notice of funding availability requires an organization to maintain tax-exempt status, it will expressly state the statutory authority for requiring such status. Applicants should consult with the appropriate HUD program office to determine the scope of any applicable requirements. In HUD programs in which an applicant must show that it is a nonprofit organization but this is not statutorily defined, the applicant may do so by any of the following means:*

*(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;*  
*(2) A statement from a State or other governmental taxing body or the State secretary of State certifying that—*

*(i) The organization is a nonprofit organization operating within the State; and*

*(ii) No part of its net earnings may benefit any private shareholder or individual;*

*(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant;*

*(4) Any item described in paragraphs (l)(1) through (3) of this section, if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate; or*

*(5) For an entity that holds a sincerely held religious belief that it cannot apply for a determination as an entity that is tax-exempt under section 501(c)(3) of the Internal Revenue Code, evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under paragraphs (l)(1) through (4) of this section.*

*(m) Rule of construction. Neither HUD nor any recipient or other intermediary receiving funds under any HUD program or activity shall construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.*

*[69 FR 41717, July 9, 2004, as amended at 80 FR 75934, Dec. 7, 2015; 81 FR 19416, Apr. 4, 2016; 85 FR 82315, Dec. 17, 2020]*

#### *§ 5.110 Waivers.*

*Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this title and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).*

#### *§ 5.111 Housing counseling.*

*(a) Any housing counseling, including homeownership counseling or rental housing counseling, as defined in § 5.100, required under or provided in connection with any program administered*

*by HUD shall be provided only by organizations and counselors certified by the Secretary under 24 CFR part 214 to provide housing counseling, consistent with 12 U.S.C. 1701x.*

*(b) For purposes of this section, required under or provided in connection with any program administered by HUD means:*

*(1) Housing counseling required by statute, regulation, Notice of Funding Availability (NOFA), or otherwise required by HUD;*

*(2) Housing counseling that is funded under a HUD program;*

*(3) Housing counseling that is required by a grantee or subgrantee of a HUD program as a condition of receiving assistance under the HUD program; or*

*(4) Housing counseling to which a family assisted under a HUD program is referred, by a grantee or subgrantee of the HUD program.*

*[81 FR 90657, Dec. 14, 2016]*

#### *Affirmatively Furthering Fair Housing*

*Source:*

*Sections 5.150 through 5.180 appear at 80 FR 42352, July 16, 2015, unless otherwise noted.*

#### *§ 5.150 Affirmatively Furthering Fair Housing: Purpose.*

*Pursuant to the affirmatively furthering fair housing mandate in section 808(e)(5) of the Fair Housing Act, and in subsequent legislative enactments, the purpose of the Affirmatively Furthering Fair Housing (AFFH) regulations is to provide program participants with a substantive definition of the AFFH requirement, as well as to provide access to an effective planning approach to aid those program participants that wish to avail themselves of it in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination.*

*[86 FR 30790, June 10, 2021]*

#### *§ 5.151 Affirmatively Further Fair Housing: Definitions.*

*For purposes of §§ 5.150 through 5.152, the terms “consolidated plan,” “consortium,” “unit of general local government,” “jurisdiction,” and “State” are defined in 24 CFR part 91. For PHAs, “jurisdiction” is defined in 24 CFR 982.4. The following additional definitions are provided solely for purposes of §§ 5.150 through 5.152 and related amendments in 24 CFR parts 91, 92, 570, 574, 576, and 903:*

*Affirmatively furthering fair housing means taking meaningful actions, in addition to combating*



*discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.*

*Disability.*

*(1) The term “disability” means, with respect to an individual:*

*(i) A physical or mental impairment that substantially limits one or more major life activities of such individual;*

*(ii) A record of such an impairment; or*

*(iii) Being regarded as having such an impairment.*

*(2) The term “disability” as used herein shall be interpreted consistent with the definition of such term under section 504 of the Rehabilitation Act of 1973, as amended by the Americans with Disabilities Act Amendments Act of 2008. This definition does not change the definition of “disability” or “disabled person” adopted pursuant to a HUD program statute for purposes of determining an individual's eligibility to participate in a housing program that serves a specified population.*

*Fair housing choice means that individuals and families have the information, opportunity, and options to live where they choose without unlawful discrimination and other barriers related to race, color, religion, sex, familial status, national origin, or disability. Fair housing choice encompasses:*

*(1) Actual choice, which means the existence of realistic housing options;*

*(2) Protected choice, which means housing that can be accessed without discrimination; and*

*(3) Enabled choice, which means realistic access to sufficient information regarding options so that any choice is informed. For persons with disabilities, fair housing choice and access to opportunity include access to accessible housing and housing in the most integrated setting appropriate to an individual's needs as required under Federal civil rights law, including disability-related services that an individual needs to live in such housing.*

*Housing programs serving specified populations. Housing programs serving specified populations are HUD and Federal housing programs, including designations in the programs, as applicable, such as HUD's Supportive Housing for the Elderly, Supportive Housing for Persons with Disabilities, homeless assistance programs under the McKinney-Vento Homeless*

*Assistance Act (42 U.S.C. 11301 et seq.), and housing designated under section 7 of the United States Housing Act of 1937 (42 U.S.C. 1437e), that:*

*(1) Serve specific identified populations; and*

*(2) Comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs); the Fair Housing Act (42 U.S.C. 3601–19), including the duty to affirmatively further fair housing; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, et seq.); and other Federal civil rights statutes and regulations.*

*Integration means a condition, within the program participant's geographic area of analysis, in which there is not a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a particular type of disability when compared to a broader geographic area. For individuals with disabilities, integration also means that such individuals are able to access housing and services in the most integrated setting appropriate to the individual's needs. The most integrated setting is one that enables individuals with disabilities to interact with persons without disabilities to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 28 CFR part 35, appendix B (2010) (addressing 28 CFR 35.130 and providing guidance on the Americans with Disabilities Act regulation on nondiscrimination on the basis of disability in State and local government services).*

*Meaningful actions means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.*

*Racially or ethnically concentrated area of poverty means a geographic area with significant concentrations of poverty and minority populations.*

*Segregation means a condition, within the program participant's geographic area of analysis, in which there is a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a type of disability in a particular geographic area when compared to a broader geographic area. For persons with disabilities, segregation includes a condition in which the housing or services are not in the most integrated setting appropriate to an individual's needs in accordance with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101, et seq.), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). (See 28 CFR part 35, appendix B (2010), addressing 25 CFR 35.130.) Participation in "housing programs serving specified populations" as defined in this section does not present a fair housing issue of segregation, provided that such programs are administered to comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs): The Fair Housing Act (42 U.S.C. 3601–19), including the duty to affirmatively further fair housing; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, et seq.); and other Federal civil rights statutes and regulations.*

*Significant disparities in access to opportunity means substantial and measurable differences in access to educational, transportation, economic, and other important opportunities in a community, based on protected class related to housing.*

*[86 FR 30790, June 10, 2021]*

*§ 5.152 AFFH certification and administration.*

*(a) Certifications. Program participants must certify that they will comply with their obligation of affirmatively furthering fair housing when required by statutes or regulations governing HUD programs. Such certifications are made in accordance with applicable regulations. Consolidated plan program participants are subject to the certification requirements in 24 CFR part 91, and PHA Plan program participants are subject to the certification requirements in 24 CFR part 903.*

*(b) Administration. To assist program participants in carrying out their obligation of affirmatively furthering fair housing, and supporting their certifications pursuant to paragraph (a) of this section, HUD will provide technical assistance to program participants in various ways, including by:*

*(1) Making HUD-provided data and informational resources available, including about how to voluntarily engage in fair housing planning, such as:*

*(i) Analyzing fair housing data, assessing fair housing issues and contributing factors, assessing fair housing priorities and goals; taking meaningful actions to support identified goals; and taking no action that is materially inconsistent with the obligation to affirmatively further fair housing; or*

*(ii) Conducting an analysis to identify impediments to fair housing choice within the jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard; or*

*(iii) Engaging in other means of fair housing planning that meaningfully supports this certification;*

*(2) Permitting a program participant to voluntarily submit its fair housing planning for HUD feedback from the responsible office; and*

*(3) Engaging in other forms of technical assistance.*

*(c) Procedure for challenging the validity of an AFFH certification. The procedures for challenging the validity of an AFFH certification are as follows:*

*(1) For consolidated plan program participants, HUD's challenge to the validity of an AFFH certification will be as specified in 24 CFR part 91.*

*(2) For PHA Plan program participants, HUD's challenge to the validity of an AFFH certification will be as specified in 24 CFR part 903.*

*(d) Definitions. For purposes of this section, the following definitions apply:*

*(1) Data refers collectively to the sources of data provided in paragraphs (d)(1)(i) and (d)(1)(ii) of this definition. When identification of the specific source of data in paragraphs (d)(1)(i) and (d)(1)(ii) is necessary, the specific source (HUD-provided data or local data) will be stated.*

*(i) HUD-provided data. The term "HUD-provided data" refers to HUD-provided metrics, statistics, and other quantified information that may be used when conducting fair housing planning. HUD-provided data will not only be provided to program participants but will be posted on HUD's website for availability to all of the public;*

*(ii) Local data. The term "local data" refers to metrics, statistics, and other quantified information, relevant to the program participant's geographic areas of analysis, that can be found through a reasonable amount of search, are readily available at little or no cost, and may be used to conduct fair housing planning.*

*(2) Program participants means:*

*(i) Jurisdictions and Insular Areas, as described in 570.405 and defined in 570.3, that are required to submit consolidated plans for the following programs:*

*(A) The Community Development Block Grant (CDBG) program (see 24 CFR part 570, subparts D and I);*

*(B) The Emergency Solutions Grants (ESG) program (see 24 CFR part 576);*

*(C) The HOME Investment Partnerships (HOME) program (see 24 CFR part 92); and*

*(D) The Housing Opportunities for Persons With AIDS (HOPWA) program (see 24 CFR part 574).*

*(ii) Public housing agencies (PHAs) receiving assistance under sections 8 or 9 of the United States Housing Act of 1937 (42 U.S.C. 1437f or 42 U.S.C. 1437g).*

*(3) Protected characteristics are race, color, religion, sex, familial status, national origin, having a disability, and having a type of disability.*

*(4) Protected class means a group of persons who have the same protected characteristic; e.g., a group of persons who are of the same race are a protected class. Similarly, a person who has a mobility disability is a member of the protected class of persons with disabilities and a member of the protected class of persons with mobility disabilities.*

[86 FR 30791, June 10, 2021]

§§ 5.153-5.180 [Reserved]

*Appendix A to Subpart A of Part 5—Notice of Funding Availability*

*(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of 42 U.S.C. 2000bb et seq., HUD will not, in the selection of recipients, discriminate against an organization on the basis of the organization's religious character, affiliation, or exercise.*

*(b) A faith-based organization that participates in this program will retain its independence, and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law, including the Free Speech and Free Exercise Clauses of the Constitution, 42 U.S.C. 2000bb et seq., 42 U.S.C. 238n, 42 U.S.C. 18113, 42 U.S.C. 2000e-1(a) and 2000e-2(e), 42 U.S.C. 12113(d), and the Weldon Amendment, among others. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws, particularly under the Religious Freedom Restoration Act.*

*(c) A faith-based organization may not use direct financial assistance from HUD to support or engage in any explicitly religious activities except where consistent with the Establishment Clause and any other applicable requirements. Such an organization also may not, in providing services funded by HUD, discriminate against a beneficiary or prospective program beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.*

[85 FR 82137, Dec. 17, 2020]



### 3. AFFIRMATIVE MARKETING

A. It is the policy of the PHA to conduct outreach as needed to maintain an adequate application pool representative of the eligible population in the area. All marketing efforts will include outreach to those least likely to apply. [24 CFR § 960.103(b)] which states:

*§ 960.103 Equal opportunity requirements and protection for victims of domestic violence, dating violence, sexual assault, or stalking.*

*(a) Applicable requirements. The PHA must administer its public housing program in accordance with all applicable equal opportunity requirements imposed by contract or federal law, including the authorities cited in § 5.105(a) of this title.*

*(b) PHA duty to affirmatively further fair housing. The PHA must affirmatively further fair housing in the administration of its public housing program.*

*(c) Equal opportunity certification. The PHA must submit signed equal opportunity certifications to HUD in accordance with § 903.7(o) of this title, including certification that the PHA will affirmatively further fair housing.*

*(d) Protection for victims of domestic violence, dating violence, sexual assault, or stalking. The PHA must apply the requirements in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).*

*Outreach efforts will take into consideration:*

- 1. The number of vacant units*
- 2. Availability of units through turnover*
- 3. Waiting List Characteristics*

*A. The PHA will periodically assess the factors in order to determine the need for and scope of any marketing efforts.*

*B. All marketing and informational materials will:*

- 1. comply with the Fair Housing Act requirements with respect to the Equal Housing Opportunity logo and use of nondiscriminatory language [24 CFR § 109.30 (a)];*
- 2. describe the housing units, application process, Waiting List, priority system and eligibility accurately;*

3. will be in plain language and will use more than strictly English language print media;
4. will target all agencies that serve and advocate for potential applicants;
5. will make clear who is eligible: low-income individuals and families; working and non-working people; as well as the elderly and disabled.
6. will make clear that it is the PHA's responsibility to provide reasonable accommodations to people with disabilities.



#### **4. PRIVACY**

The WHA is strongly committed to protecting the privacy of people dealing with the agency to the greatest degree practical. There are numerous federal privacy laws, regulations, notices, and other requirements that the Housing Authority follows to the greatest degree practical. Details about these requirements are set forth in PIH Notice 2015-06 and any ensuing publications. The Housing Authority will educate all of its employees who have access to personally identifiable information (PII) and/or Sensitive Personally Identifiable Information about these requirements and expect them to appropriately manage and safeguard the information. Employees will also be trained on the proper disposition of said information.

Please refer to the EIV Security Policy for more detailed information.



## 5. ETHICAL STANDARDS

### PURPOSE

This Code of Conduct establishes standards for employee and Commissioner conduct that will assure the highest level of public service. Recognizing that compliance with any ethical standards rests primarily on personal integrity and specifically in this situation with the integrity of the employees and Commissioners of the WHA, this Section sets forth those acts or omissions of acts that could be deemed injurious to the general mission of the Authority.

This Code of Conduct is not intended, nor should it be construed, as an attempt to unreasonably intrude upon the individual employee or Commissioner's right to privacy and the right to participate freely in a democratic society and economy.

### CONFLICT OF INTEREST

Neither the WHA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with any program in which any of the following classes of persons has any interest, direct or indirect, during his or her tenure with the WHA or for one year thereafter:

- A. Any present or former member or officer of the Housing Authority (except a participant commissioner);
- B. Any employee of the Housing Authority or any contractor, subcontractor or agent of the Housing Authority who formulates policy or who influences decisions with respect to the programs;
- C. Any public official, member of a governing body, or State or local legislator who exercises functions or responsibilities with respect to the WHA's programs; or
- D. Any member of the Congress of the United States.

Any member of the classes described in A, B, C, or D, must disclose their interest or prospective interest to the Housing Authority and HUD.

1. The Conflict-of-Interest prohibition under this section may be waived by the HUD Field Office upon the request of the WHA for good cause.

*2. Code of Conduct for Procuring Property and Services. All Federal award recipients, except states, and all subrecipients under Federal awards must have a code of conduct (or written standards of conduct) for procurements that meets all requirements in 2 CFR 200.318(c). Before entering into an agreement with HUD, each applicant selected for an award (other than a state) must ensure an up-to-date copy of the organization's code of conduct, dated and signed by the Executive Director, Chair, or equivalent official, of the governing body of the organization, is available in the Code of Conduct e-library.*

*Applicants can check the Code of Conduct List to confirm HUD has received their Code of Conduct. HUD does not collect or review state codes of conduct for compliance with 2 CFR 200.318(c). Instead, each state must follow the same policies and procedures for procurements under Federal awards that the state uses for procurements from its non-Federal funds, as provided in 2 CFR 200.317.*

**3. Other Conflicts of Interest.** *All recipients and subrecipients must comply with the conflict-of-interest requirements in the applicable program regulations and grant agreements. If there are no program-specific regulations for the award, the following conflict-of-interest requirements apply:*

**A. Conflicts Subject to Procurement Regulations.** *In the procurement of property or services by recipients and subrecipients, the conflict-of-interest rules in 2 CFR 200.317 and 2 CFR 200.318(c) shall apply. In all cases not governed by 2 CFR 200.317 and 2 CFR 200.318(c), recipients and subrecipients must follow the requirements contained in the list of exceptions located in the Administrative, National & Departmental Policy Requirements and Terms for HUDs Financial Assistance.*

**B. General prohibition.** *No person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or subrecipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have a financial interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.*

## **PROHIBITION OF SOLICITATION OR ACCEPTANCE OF GIFTS**

No Commissioner or Authority employee shall solicit any gift or consideration of any kind, nor shall any Authority employee accept or receive a gift having a value in excess of \$00.00, regardless of the form of the gift, from any person who has an interest in any matter proposed or pending before the Authority.

## **HOUSING AUTHORITY ADMINISTRATIVE AND DISCIPLINARY REMEDIES FOR VIOLATION OF THE HOUSING AUTHORITY CODE OF CONDUCT**

Violations of this Code of Conduct Policy will result in disciplinary action as outlined in the WHA's Personnel Policy or as determined by action of the Board of Commissioners.

## **5A. Administrative, National, and Department Policy Requirements and Terms for HUD's Financial Assistance Programs**

*The requirements below only apply if they are listed in the Section VI.B., "Administrative, National and Departmental Policy Requirements and Terms for HUD Applicants and Recipients of Financial Assistance Awards" of the program NOFO. The legal agreement signed pursuant to an award with the recipient or subaward with a subrecipient must contain assurance of compliance with program requirements, including but not limited to nondiscrimination and equal opportunity requirements. 24 C.F.R. § 5.105(a).*

### **1. The Fair Housing Act.**

*Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, (42 U.S.C. §§ 3601 – 3619; implementing regulations at 24 CFR part 100 et seq.) prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, because of race, color, religion, sex (including gender identity and sexual orientation), familial status, national origin, and disability. It also requires that all federal programs relating to housing and urban development be administered in a manner that affirmatively furthers fair housing.*

*Additionally, recipients of HUD funding and their prospective subrecipients, must comply with the fair housing law(s) of the state or locality in which their program or activity is conducted (e.g., if there is a law prohibiting discrimination in housing based on lawful source of income).*

### **2. Title VI of the Civil Rights Act of 1964.**

*Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and HUD's implementing regulations (24 C.F.R. part 1) prohibit recipients of federal financial assistance from discriminating against any person on the basis of race, color, or national origin. Under Title VI, recipients may not exclude a person from participation, restrict access, treat differently, deny any benefit, provide any benefit differently, or otherwise discriminate against any person on the basis of race, color, or national origin. Recipients also may not utilize criteria or methods of administration that have the purpose or effect of subjecting individuals to discrimination because of their race, color, or national origin. Siting decisions by recipients may not have the purpose or effect of discriminating based on race, color, or national origin. Recipients also may not subject any person to segregation based on race, color, or national origin. In addition, recipients are obligated to take reasonable actions to remove or overcome the consequences of prior discriminatory practices regardless of whether the recipient engaged in discriminatory conduct. Title VI applies to actions taken directly and actions taken through contractual arrangements.*

### **3. The Age Discrimination Act of 1975.**

*The Age Discrimination Act of 1975 (42 U.S.C. §§ 6101 – 6107) prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance. HUD's implementing regulations are at 24 C.F.R. part 146.*

### **4. Section 504 of the Rehabilitation Act of 1973.**

*Section 504 (29 U.S.C. § 794) and HUD's implementing regulations (24 C.F.R. part 8) prohibits discrimination based on disability in any program or activity receiving federal financial assistance. Recipients of federal financial assistance may not deny a qualified individual with disabilities the opportunity to participate in or benefit from housing, or an aid, benefit, or service. Recipients must*

*provide equal benefits to individuals with disabilities. Recipients may not provide different or separate benefits to individuals with disabilities, unless necessary to provide such individuals with benefits that are equally effective to those provided others. Recipients must administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with disabilities. Section 504 applies to actions taken directly and actions taken through contractual arrangements.*

*Under Section 504, recipients must provide reasonable accommodations for persons with disabilities. A reasonable accommodation is a change, adaptation, or modification to a policy, program, service, or workplace which will allow a qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job.*

*Recipients must also take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public, such as providing auxiliary aids and services, including American Sign Language interpreters and alternate format documents (e.g., Braille, large print, accessible electronic communications) for persons with disabilities.*

#### **5. *The Americans with Disabilities Act.***

*Title II of the ADA (42 U.S.C. §§ 12131 – 12165) prohibits discrimination based on disability in programs and activities provided or made available by public entities. Title III of the ADA (42 U.S.C. §§ 12181 – 12189) prohibits discrimination based on disability in the goods, services, facilities, privileges, advantages, and accommodations of places of public accommodations owned, leased, or operated by private entities.*

#### **6. *Affirmatively Furthering Fair Housing requirements.***

*Section 808(e)(5) of the Fair Housing Act (42. U.S.C. 3608(e)(5)) requires HUD to administer its programs and activities in a manner to affirmatively further the purposes of the Fair Housing Act. HUD requires recipients of HUD funds, including those awarded and announced under HUD's FY 2023 NOFOs not specifically exempted, to take meaningful actions that affirmatively further fair housing.*

#### **7. *Economic Opportunities for Low-and Very Low-income Persons (Section 3).***

*Section 3 of the Housing and Urban Development Act of 1968 (Section 3), (12 U.S.C. § 1701u), entitled "Economic Opportunities for Low- and Very Low-Income Persons," and the HUD regulations at 24 CFR part 75 require, to the greatest extent feasible, that training, employment, contracting and other economic opportunities be directed to low- and very low-income persons, especially recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons.*

*HUD encourages recipients to search the national Section 3 Business Registry to find local businesses that prioritize hiring Section 3 workers.*

#### **8. *Improving Access to Services for Persons with Limited English Proficiency.***

*Executive Order 13166 seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English Proficiency (LEP). Recipients and subrecipients of HUD funds shall take reasonable steps to ensure meaningful language access to their programs and activities to persons with LEP. As an aid to recipients and subrecipients, HUD published Final Guidance to Federal Financial Assistance Recipients Regarding Title VI*

*Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance) in the Federal Register on January 22, 2007 (72 FR 2731). The LEP guidance and additional information is available here: Federal Register.*

#### **9. Accessible Technology.**

*Section 508 of the Rehabilitation Act of 1973 requires HUD to ensure, when developing, procuring, maintaining, or using electronic and information technology (EIT), that the EIT allows persons with disabilities to access and use information and data comparably to those without disabilities unless an undue burden would result to the Federal agency. HUD encourages its recipients and subrecipients to adopt the goals and objectives of Section 508 by ensuring comparable access whenever EIT is used. In addition, the recipient and subrecipient(s) must assure their program and activities are carried out in compliance with applicable requirements in Section 504 of the Rehabilitation Act, HUD's implementing regulations in 24 CFR part 8, and, where applicable, the Americans with Disabilities Act. These statutes also require effective communication with individuals with disabilities and prohibit EIT-imposed barriers to access information, programs, and activities for persons with disabilities. For more information, see HUD's policy on Section 508 of the Rehabilitation Act and Accessible Technology.*

#### **10. Equal Access to Housing Regardless of Sexual Orientation, Gender Identity, or Marital Status.**

*HUD's equal access requirements in 24 CFR 5.105(a)(2) and 5.106 apply as written. The Equal Access Rule at 24 CFR 5.105(a)(2) requires that a determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by HUD shall be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. Furthermore, under 24 CFR 5.106, any recipient, sub-recipient, owner, operator, manager, or service provider funded in whole or part by any Community Planning and Development (CPD) program must provide equal access to programs, activities, services, or facilities in accordance with a person's gender identity.*

*HUD's definitions of sexual orientation and gender identity under the Equal Access Rule are at 24 CFR 5.100.*

*In addition, the Fair Housing Act prohibits discrimination in housing and housing-related services because of sex, which includes discrimination because of sexual orientation or gender identity.*

#### **11. Ensuring the Participation of Small Disadvantaged Businesses, and Women-Owned Businesses.**

*HUD is committed to ensuring that small businesses; small, disadvantaged businesses; women-owned businesses; and Labor Surplus Area Firms participate fully in the direct contracting and contracting opportunities generated by HUD's financial assistance. Recipients and subrecipients are required by 2 CFR 200.321 to take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and Labor Surplus Area Firms are used whenever possible.*

**12. Energy Efficient, Sustainable, Accessible, and Free from Discrimination by Design.**

*Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad," directs HUD to deploy its full capacity to reduce pollution, increase resilience, and conserve water, as well as align its management of real property and financial programs to support robust climate action. In addition, the Presidential Memorandum "Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies" (86 FR 7487) directs HUD to ensure sufficient physically accessible housing, and secure equal access to housing opportunity for all.*

*Housing constructed, rehabilitated, and/or acquired with HUD funds should (following rehabilitation, if necessary) be well-designed, energy- and water-efficient, sustainable, accessible, and free from discrimination. Housing should, where practicable, prioritize location efficiency; be resistant to local disaster risks; have healthy indoor air quality; embrace the tenets of accessible design, including concepts of visitability and universal design; have access to affordable broadband internet for residents; and use native plant species in landscape design.*

*All new construction and/or feasible substantial rehabilitation should meet a Green and Resilient Building Standard and should adhere to Elevation Standards (as described below) for structures in a 100-year floodplain. When older or obsolete products are replaced as part of rehabilitation work, rehabilitation should use ENERGY STAR-labeled, Water Sense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances.*

*a. **Green and Resilient Building Standard** means an industry-recognized standard that (1) has achieved certification under (i) Enterprise Green Communities, (ii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iii) ICC-700 National Green Building Standard Green+ Resilience; or the (iv) Living Building Challenge, or (v) any other equivalent comprehensive green building program acceptable to HUD, and (2) has achieved a minimum energy efficiency standard, such as (i) ENERGY STAR (Certified Homes or Multifamily High-Rise), (ii) DOE Zero Energy Ready Home; (iii) regional or local certifications such as Earth Craft House, Earth Craft Multifamily; Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label); Earth Advantage New Homes; (iv) Passive House Institute Passive Building or EnerPHit certification from the Passive House Institute US (PHIUS), International Passive House Association.*

*b. **Adhering to Elevation Standards** means all structures, as defined at 44 CFR 59.1, designed principally for residential use, and located in the 1 percent annual chance (or 100-year) floodplain, that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the one percent annual chance floodplain elevation (base flood elevation). Mixed-use structures with no dwelling units and no residents below two feet above base flood elevation, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) and 60.3(c)(4)(i) or successor standard, up to at least two feet above base flood elevation. These elevation standards apply to new construction, repair of substantial damage, or substantial improvement of residential structures located in an area delineated as a special flood hazard area or equivalent in FEMA's data sources identified in 24 CFR 55.2(b)(1). 24 CFR 55.2(b)(10)(ii)(B) excludes from the*



*definition of substantial improvement “Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places.”*

### **13. Real Estate Acquisition and Relocation.**

*With certain exceptions, HUD-funded programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. §§ 4601 et seq.), and the government-wide implementing regulations issued by the Federal Highway Administration at 49 CFR part 24. The URA applies to acquisitions of real property and relocation occurring as a direct result of the acquisition, rehabilitation, or demolition of real property for Federal or Federally funded programs or projects.*

*Generally, real property acquisition that receives Federal financial assistance for a program or project, as defined in 49 CFR 24.2, must comply with the acquisition requirements contained in 49 CFR part 24, subpart B. If real property acquisitions satisfy one of the acquisition requirements of 49 CFR 24.101(b)(1) through (5), then the real property acquisitions will not be subject to the requirements in 49 CFR part 24, subpart B.*

*The relocation requirements of the URA and its implementing regulations at 49 CFR part 24, cover any displaced person who moves from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no URA statutory provisions for “temporary relocation,” the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR 24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA permanent relocation assistance. Some HUD program regulations provide additional protections for temporarily relocated tenants. Before planning their project, applicants must review the regulations for the programs to which they are applying. Individual NOFOs may have additional relocation guidance and requirements.*

*Additional resources and guidance pertaining to real property acquisition and relocation for HUD-funded programs and projects are available on HUD’s Real Estate Acquisition and Relocation website at [www.hud.gov/relocation](http://www.hud.gov/relocation). Applicable laws and regulations, policy and guidance, publications, training resources, and a listing of HUD contacts are also available for applicants who have questions or need assistance.*

### **14. Participation in a HUD-Sponsored Program Evaluation.**

*As a condition of the receipt of the award under a NOFO, the recipient is required to cooperate with all HUD staff, contractors, or designated grantees performing research or evaluation studies funded by HUD.*

### **15. OMB Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.**

*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, set forth in 2 CFR part 200, apply, except as otherwise provided by the Program NOFO or applicable program regulations. However, where a program-specific regulation issued before 2020 incorporates a specific part 200 requirement that was renumbered or replaced as a result of 85 FR 49506 and 86 FR 10439, the part 200 requirement as replaced or renumbered by 85 FR 49506 and*

86 FR 10439 will govern. The requirements of 2 CFR 200.337 apply to all records pertaining to HUD awards.

**16. Drug-Free Workplace.**

The following award term applies to all recipients: You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR part 2429, which adopts the governmentwide implementation (2 CFR part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

**17. Privacy Act Requirements Related to Safeguarding Resident/Client Files.**

In maintaining resident and client files, funding recipients shall observe all applicable privacy laws, including state, local, and tribal laws concerning the disclosure of records that pertain to individuals and take reasonable measures to ensure that all such files are safeguarded, including when reviewing, printing, or copying client files. Federal requirements will apply where state, local, or tribal laws are inconsistent with Federal requirements, to the extent such Federal requirements preempt state, local, and tribal laws. When collecting or maintaining personally identifiable information for inclusion in a HUD system of records as defined by the Privacy Act, recipients shall comply with agency rules, regulations, or other requirements issued under the Privacy Act as applicable.

**18. Compliance with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282) (Transparency Act), as amended.**

To accomplish the purposes of 2 CFR part 170, the following award terms from Appendix A to 2 CFR part 170 apply to all recipients:

**Reporting Subawards and Executive Compensation**

**a. Reporting of first-tier subawards.**

**Applicability.** Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).

**2. Where and when to report.**

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

**3. What to report.** You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

**b. Reporting total compensation of recipient executives for non-Federal entities.**

**1. Applicability and what to report.** You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if -

i. The total Federal funding authorized to date under this Federal award equals or exceeds \$30,000 as defined in 2 CFR 170.320;

ii. in the preceding fiscal year, you received -

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

**2. Where and when to report.** You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at <https://www.sam.gov>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

**c. Reporting of Total Compensation of Subrecipient Executives.**

**1. Applicability and what to report.** Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if -

i. In the subrecipient's preceding fiscal year, the subrecipient received -

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

**2. Where and when to report.** You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient; and

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

**d. Exemptions.**

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

**e. Definitions.** For purposes of this award term:

1. **Federal Agency** means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

2. **Non-Federal entity** means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization; and
- iv. A domestic or foreign for-profit organization

3. **Executive** means officers, managing partners, or any other employees in management positions.

**4. Subaward:**

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. **Subrecipient** means a non-Federal entity or Federal agency that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. **Total compensation** means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)).

### **19. Eminent Domain.**

*No Federal funds provided under the Federal award may be used to support any Federal, state, or local project that seeks to use the power of eminent domain, unless eminent domain is employed only for a public use. Public use shall not be construed to include economic development that primarily benefits private entities. Use of funds for mass transit, railroad, airport, seaport, or highway projects, and utility projects which benefit or serve the general public (including energy-related, communication-related, water-related, and waste water-related infrastructure), other structures designated for use by the general public or with other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields, as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107-118), will be a public use for Section 407 purposes.*

### **20. Accessibility for Persons with Disabilities.**

*For all HUD-funded activities:*

*a. All meetings must be held, and services provided, in facilities that are physically accessible to persons with disabilities. Recipients and subrecipients must give priority to alternative methods of product or information delivery that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate in accordance with HUD's implementing regulations for section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) at 24 CFR part 8, subpart C; and*

*b. All notices of and communications during training sessions and public meetings shall be provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities or provide other means of accommodation for persons with disabilities consistent with section 504 of the Rehabilitation Act of 1973 and HUD's Section 504 regulations. Recipients and subrecipients must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is provided in appropriate accessible formats as needed, e.g., Braille, audio, large type, assistive listening devices, sign language interpreters, accessible websites, and other electronic communications. See 24 CFR Section 8.6; 28 CFR 35.160, 36.303.*

### **21. Violence Against Women Act.**

*The Violence Against Women Act of 1994, as amended (VAWA), provides housing protections for victims of domestic violence, dating violence, sexual assault, and stalking in many of HUD's housing programs. HUD's regulations implementing VAWA, as amended by the Violence Against Women Reauthorization Act of 2013, are found in the applicable program regulations and 24 CFR Part 5, Subpart L, Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (collectively, the VAWA rule). The specific HUD programs that are subject to the VAWA housing protections are listed in the "covered housing program" definition at 24 CFR 5.2003, and as may be identified by HUD through further regulations, notices, or any other means. In general, the VAWA rule provides that an applicant for assistance or tenant assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.*

*The VAWA rule also requires the establishment of emergency transfer plans for facilitating the emergency relocation of certain tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. For the specific requirements of the VAWA rule, see 24 CFR Part 5, Subpart L, and the applicable program regulations. VAWA, as reauthorized by the Violence Against Women Act Reauthorization Act of 2022, further provides that no public housing agency or owner or manager or housing assisted under a covered housing program shall discriminate against any person because that person has opposed any act or practice made unlawful by the housing title of VAWA or because that person testified, assisted, or participated in any related matter. It also provides that no public housing agency or owner or manager of housing assisted under a covered housing program shall coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under the housing title of VAWA. VAWA also protects the right to report crime and emergencies from housing. It establishes that landlords, homeowners, tenants, residents, occupants, and guests of, and applicants for, housing shall have the right to seek law enforcement or emergency assistance on their own behalf or on behalf of another person in need of assistance. It prohibits application of actual or threatened penalties based on requests for assistance or based on criminal activity of which an individual is a victim or otherwise not at fault under the laws or policies adopted or enforced by "covered governmental entities" meaning any municipal, county, or State government that receives funding under Section 106 of the Housing and Community Development Act of 1974.*

## **22. Conducting Business in Accordance with Ethical Standards**

### **A. Code of Conduct for Procuring Property and Services.**

*All Federal award recipients, except states, and all subrecipients under Federal awards must have a code of conduct (or written standards of conduct) for procurements that meets all requirements in 2 CFR 200.318(c). Before entering into an agreement with HUD, each applicant selected for an award (other than a state) must ensure an up-to-date copy of the organization's code of conduct, dated and signed by the Executive Director, Chair, or equivalent official, of the governing body of the organization, is available in Code of Conduct e-library. Applicants can check the Code of Conduct List to confirm that HUD has received their Code of Conduct.*

*HUD does not collect or review state codes of conduct for compliance with 2 CFR 200.318(c). Instead, each state must follow the same policies and procedures for procurements under Federal awards that the state uses for procurements from its non-Federal funds, as provided in 2 CFR 200.317.*

### **B. Other Conflicts of Interest.**

*All recipients and subrecipients must comply with the conflict-of-interest requirements in the applicable program regulations and grant agreements. If there are no program-specific regulations for the award, the following conflict-of-interest requirements apply:*

*i. Conflicts Subject to Procurement Regulations. In the procurement of property or services by recipients and subrecipients, the conflict-of-interest rules in 2 CFR 200.317 and 2 CFR 200.318(c) shall apply. In all cases not governed by 2 CFR 200.317 and 2 CFR 200.318(c), recipients and subrecipients must follow the requirements contained in paragraphs ii-v below.*

*ii. General prohibition. No person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or subrecipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have a financial interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), sibling(including a stepsibling), grandparent, grandchild, and in-laws of a covered person.*

*iii. Exceptions. HUD may grant an exception to the general prohibition in paragraph (ii) upon the recipient's written request and satisfaction of the threshold requirements in paragraph (iv), if HUD determines the exception will further the Federal purpose of the award and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effects of the factors in paragraph (v).*

*iv. Threshold requirements for exceptions. HUD will consider an exception only after the recipient has provided the following documentation:*

- a. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and*
- b. An opinion of the recipient's attorney that the interest for which the exception is sought would not violate state, local, or tribal law.*

*v. Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements in paragraph (iii), HUD will consider the cumulative effect of the following factors, where applicable:*

- a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;*
- b. Whether an opportunity was provided for open competitive bidding or negotiation;*
- c. Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;*
- d. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;*
- e. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (ii);*
- f. Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and*
- g. Any other relevant considerations.*

vi. For purposes of the above requirements, once procured, contractors are considered agents of the recipient or subrecipient and are subject to the above conflict of interest rules in addition to the those for procurements at 2 CFR 200.317 or 2 CFR 200.318, as applicable.

Recipients must disclose in writing any potential conflict of interest to HUD.

### **23. Build America, Buy America.**

#### **A. Applicability.**

The Build America, Buy America Act (“the BABA Act”), Public Law No. 117-58, §§ 70901-52, requires Federal agencies to ensure none of the funds made available for a Federal financial assistance award for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. To this end, recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that starting May 14, 2022, any funds obligated are covered under the BABA Act. And, pursuant to the General Applicability Waiver of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance, funds obligated on or after November 14, 2022 must comply with section 70914 of the BABA Act, which includes the incorporation of a Buy America Preference (BAP) in the terms and conditions of each award with infrastructure activities. As described in the General Applicability Waiver of Build America, Buy American Provisions as Applied to Tribal Recipients of HUD Federal Financial Assistance, the BABA implementation deadline for federal financial assistance from a program for infrastructure provided to Tribes, tribally designated housing entities (TDHEs) and other tribal entities (“Tribal Recipients”) are delayed until after tribal consultation has been conducted. Regardless of the program, funds obligated tribal recipients on or after May 14, 2023 must comply with Section 70914 of the BABA Act.

In addition, any Federal awards made on or after the applicable effective date must take appropriate steps to ensure financial assistance awards comply with the BABA Act requirements, which may include appropriate terms and conditions incorporating a BAP.

Renewal awards and amendments obligating additional funds to existing awards that are executed on or after November 14, 2022, must also include a Buy America Preference (BAP). Per Office of Management and Budget (OMB) Memorandum number M-22-11, inclusion of a BAP means that none of the funds provided under this award may be used for a project for infrastructure unless:

(1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

(2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured



*product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and*

*(3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. “All manufacturing processes” for construction materials includes the final manufacturing process and the immediately preceding manufacturing stage for the construction material.*

*A BAP only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. The Buy America preference does not apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.*

***B. Exceptions to Buy America Preference Requirements Must be Established with a Waiver.***

*When necessary, recipients may apply for, and HUD may grant, a waiver from the requirements listed above. HUD will notify the recipient of information on the process for requesting a waiver from these requirements.*

*(1) When HUD has decided that one of the following exceptions applies, the awarding official may waive the application of the BAP:*

- a. applying the BAP would be inconsistent with the public interest;*
- b. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or*
- c. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.*

*(2) A request to waive the application of the BAP must be in writing. HUD will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at:*

*[https://www.hud.gov/program\\_offices/general\\_counsel/BABA](https://www.hud.gov/program_offices/general_counsel/BABA)*

***C. Buy America Preference Definitions.***

*Construction materials – per M-22-11, includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials;*

aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

*Further, the definition of “construction materials” does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.*

*Items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials.*

**Domestic content procurement preference** – has the same meaning provided in the BABA Act.

**Infrastructure** – has the same meaning provided in the BABA Act”.

**Funds to for-profit organizations** – per M-11-22, for purposes of the BABA Act implementation, for-profit organizations are not considered non-Federal entities. However, there may be independent statutory authorities that agencies may have to include domestic content requirements in awards of Federal financial assistance issued to for-profit organizations.

**Project** – means the construction, alteration, maintenance, or repair of infrastructure in the United States.

*Types of Construction Projects:*

*When determining if a particular construction project of a type not listed in the definition above constitutes “infrastructure,” agencies should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. Projects with the former qualities have greater indicia of infrastructure, while projects with the latter quality have fewer. Projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project, for example (including single-unit homes and apartments in multi-unit residential facilities) would not constitute an infrastructure project, but such work in areas not limited exclusively to owners, residents, and their guests would unless otherwise excepted, constitute an infrastructure project.*

**24. System for Award Management and Universal Identifier Requirements.**

*Unless you are exempted from the requirements under 2 CFR 25.110, the requirements at 2 CFR part 25, including Appendix A of the same part, are incorporated into the award terms and conditions, and you as the recipient are required to comply. Additional guidance is available on Sam.gov.*

**25. Trafficking in Persons.**

*Pursuant to 2 CFR part 175, the following award term and condition applies as written:*

*a. Provisions applicable to a recipient that is a private entity.*

*1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—*

*i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;*

*ii. Procure a commercial sex act during the period of time that the award is in effect; or*

*iii. Use forced labor in the performance of the award or subawards under the award.*

*2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —*

*i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or*

*ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—*

*A. Associated with performance under this award; or*

*B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by HUD at 2 CFR 2424.*

*b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—*

*1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or*

*2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—*

*i. Associated with performance under this award; or*

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by HUD at 2 CFR 2424.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

**26. Award Term and Condition for Recipient Integrity and Performance Matters.**

*If the total Federal share of the Federal award includes more than \$500,000 over the period of performance, Appendix XII to 2 CFR part 200 applies and is incorporated into the award terms and conditions.*

**27. Suspension and Debarment.**

*The governmentwide debarment and suspension regulations in 2 CFR part 180 apply as incorporated and supplemented by HUD's implementing regulations in 2 CFR part 2424. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.*

**28. Environmental Justice Requirements.**

*Based on the NOFO under which you applied, you must comply with environmental justice requirements under Executive Orders 12898 and 14008. If your award is covered by OMB Memorandum M-21-28, which implements the Justice40 Initiative, section 223 of Executive Order 14008, see the additional instructions in the program NOFO.*

**29. Eliminating Barriers That May Unnecessarily Prevent Individuals with Criminal Histories from Participation in HUD Programs**

*In accordance with HUD Secretary Fudge's April 12, 2022, memorandum, Eliminating Barriers That May Unnecessarily Prevent Individuals with Criminal Histories from Participating in HUD Programs, you must prevent unfair and potentially discriminatory exclusions based on criminal history or activity. A person otherwise eligible cannot be excluded from participating in the grant program based on arrest record only. Any reliance on a person's criminal history or criminal activity must be based on accurate records and reliable evidence showing a current danger to persons or property. Before excluding an individual because of criminal history or activity, you must offer that individual the opportunity to provide evidence of mitigating circumstances and you must take such evidence into account. Evidence of mitigating circumstances can include type of crime, the severity of the offense, the length of time since the offense, and evidence of rehabilitation, or that the criminal record is inaccurate.*

**30. Equity Requirements.**

*EO 13985 requires federal agencies to develop a comprehensive approach to advancing equity for all, including Black and Brown people and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the government and requires a systemic approach to embed fairness in decision-making processes and recognize and redress inequities in policies and programs that serve as barriers to equal opportunity. Recipients of federal financial assistance from HUD are required to comply with any requirements to advance equity as HUD may prescribe in a Notice of Funding Opportunity.*

*Persons who are LGBTQ+ often are a historically underserved community. Recipients may consider the significant barriers and discrimination that persons who identify as LGBTQ+ face and consider ways to support underserved communities, such as LGBTQ+, with respect to their proposed NOFO activities.*

**31. Waste, Fraud, Abuse, and Whistleblower Protections.**

*Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of any HUD award must report such incidents to both the HUD official for the award and to HUD's Office of Inspector General (OIG). HUD's OIG is available to receive allegations of fraud, waste, and abuse related to HUD programs via its hotline number (1-800-347-3735) and its online hotline form.*

*You must comply with 10 U.S.C. 2409, including the:*

*a. Prohibition on reprisals against employees disclosing certain types of information to specified persons or bodies; and*

*b. Requirement to notify your employees in writing, in the predominant native language of the workforce, of their rights and protections under that statute.*

*Under 41 U.S.C. 4712, employees of a Government contractor, subcontractor, grantee, and subgrantee—as well as a personal services contractor—who make a protected disclosure about a Federal grant or contract cannot be discharged, demoted, or otherwise discriminated against as long as they reasonably believe the information they disclose is evidence of:*

*Gross mismanagement of a Federal Contract or Grant.*

- 1. Waste of Federal funds.*
- 2. Abuse of authority relating to a Federal Contract or Grant.*
- 3. Substantial and specific danger to public health and safety.*
- 4. Violations of any law, rule, or regulation related to a Federal Contract or Grant.*

## **6. ANTI-FRAUD POLICY**

The WHA is fully committed to combating fraud in its public housing program. It defines fraud as a single act or pattern of actions that include false statements, the omission of information, or the concealment of a substantive fact made with the intention of deceiving or misleading the WHA. It results in the inappropriate expenditure of public housing funds and/or a violation of public housing requirements.

Although there are numerous different types of fraud that may be committed, the two most common are the failure to fully report all sources of income and the failure to accurately report who is residing in the residence. The WHA shall aggressively attempt to prevent all cases of fraud.

When a fraudulent action is discovered, the WHA shall take action. It shall do one or more of the following things depending on circumstances and what it determines appropriate:

- A. Require the resident to immediately repay the amount in question;
- B. Require the resident to enter into a satisfactory repayment agreement as set forth in a previous section of this Policy;
- C. Terminate the resident's tenancy;
- D. Refer the case for criminal prosecution; or
- E. Take such other action as the WHA deems appropriate.





## 7. Limited English Proficiency (LEP) Policy

### *General Language Access Policy*

#### 1. *Policy Statement*

It is the policy of Westerly Housing Authority (WHA) to provide timely meaningful access for LEP persons to all agency programs and activities. All personnel shall provide free language assistance services to LEP individuals whom they encounter or whenever an LEP person requests language assistance services. All personnel will inform members of the public that language assistance services are available free of charge to LEP persons and that the agency will provide these services to them.”

#### 2. *Purpose and Authority*

*In accordance with Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act, this policy establishes guidelines for providing language accessible services to individuals that are limited English Proficient and/or Deaf or Hard of Hearing.*

#### 3. *Definitions*

- a. *Limited English Proficient individual means any individual whose primary language is not English, and has limited or no ability to speak, understand, read, or write English.*

*Interpretation is the process of orally rendering a spoken or signed communication from one language into another language.*

- b. *Primary language means the language that an individual communicates most effectively in.*
- c. *Translation is converting written text from one language into written text in another language. ‘Translation’ is often misused to mean interpretation, but it is a written medium.*
- d. *A qualified interpreter or translator is a trained professional who is a neutral third party with the requisite language skills, experienced in interpretation or translation techniques, and knowledgeable in specialized content areas and technical terminology in order to effectively facilitate communication between two or more parties who do not share a common language.*
- e. *Simultaneous interpretation is the process of orally rendering one language into another language virtually at the same time that the speaker is speaking with only a very short lag time.*
- f. *Consecutive interpretation is the process of orally rendering one language into another language after the speaker has completed a statement or question and pauses. The interpreter then renders that statement into the other language.*

- g. *Sight Translation is the rendering of material written in one language, completely and accurately into spoken speech in another language.*
- h. *Vital Documents are any materials that are essential to an individual's ability to access services provided by the organization, or are required by law.*

#### **4. Language Data**

*Organization shall conduct an annual/biennial review of language use and need of organization and its service population. (TIP: Include what sources of information you will include in your review. (Sources can include: intake, Census, American Community Survey, Department of Education, or the Office of Refugee Resettlement.)*

#### **Language Assistance Procedures**

#### **5. How to determine the need for language assistance**

- a. *Staff at the initial point of contact will conduct an assessment for the need for language assistance, and notify the individual of the right to an interpreter at no cost. Staff members who have subsequent contact will continue to assess the need for language assistance.*

- *To assess the need for language assessment, staff should ask open ended questions, and avoid asking questions that would allow for yes or no responses. For example, asking: "how may I be of assistance?" instead of "do you need help?"*
- *The LEP individual may speak more than one language, or may have limited proficiency in a secondary language. Staff shall identify the primary language of the LEP individual, and work to provide language assistance in the primary language of the individual.*
- *A Deaf individual may also be limited English proficient and not be proficient in American Sign Language. Staff shall work to identify the primary language of the Deaf individual, and provide language assistance in the primary language of the individual.*

- b. *Request for language assistance from the LEP individual or companion.*

#### **6. Identifying Language**

- a. *Staff shall request the individual or companion identify the language of the LEP or Deaf individual.*
- b. *Staff may request bilingual/multilingual staff or volunteers to identify the primary language.*
- c. *Use in-person, video remote interpreters, or telephonic interpreters to identify the language.*

- d. Use an "I speak" card or poster to identify the primary language.
  - e. Staff should determine of the preferred mode of communication for a Deaf or Hard of Hearing individuals is interpretation or Communication Access Realtime Translation (CART).
7. Procedures for language services (TIP: Provide step by step guidance on how staff can access language services adopted by the organization. The following are examples of different ways to provide language services).
- a. Bilingual/multilingual staff
    - (QUESTION: Who should staff contact?)
    - (QUESTIONS: What services will the bilingual/multilingual staff person provide? Interpretation or services in the primary language of the individual?)
  - b. In-person Interpreters
    - (Detailed procedures for obtaining an in-person interpretation services. QUESTION: Do you have staff interpreters? Do you contract with an interpretation agency or independent contractor?)
  - c. Telephonic/video remote Interpreters
    - (Detail procedures for obtaining services through your telephonic or video remote interpretation company.)
  - d. Video Relay Services
    - (Detail procedures for using video relay services.)
4. Translation of Vital Documents
- Organizations will make available vital forms and materials in the most frequently encountered languages. (QUESTIONS: What forms and materials will you translate? How about outreach materials? If you are outreach materials, do you have the capacity to provide services in the languages you are translating your materials?)
  - For other languages, staff should use an interpreter to sight translate the document into the individuals primary language.
  - Written communication to the LEP individual should be translated into the primary language of the LEP individual.

5. *Notice of Language Services*

*Signage will be placed in visible locations notifying individuals of the right to request an interpreter at no cost to the individual. Signage will be translated into the languages most frequently encountered by the organization.*

*Staff at the initial point of contact, will notify individuals of their right to an interpreters at no cost.*

#### **6. Prohibition against using children as interpreters**

*Staff are prohibited from using minor children to interpret, absent emergency circumstances. Clients shall be advised of client's right to an interpreter at no cost to the client.*

### **Interpreter and Translator Code of Ethics**

#### **1. Accuracy**

*Source-language speech should be faithfully rendered into the target language by conserving all the elements of the original message while accommodating the syntactic and semantic patterns of the target language. The rendition should sound natural in the target language, and there should be no distortion of the original message through addition or omission, explanation or paraphrasing. All hedges, false starts and repetitions should be conveyed; also, English words mixed into the other language should be retained, as should culturally bound terms which have no direct equivalent in English, or which may have more than one meaning. The register, style and tone of the source language should be conserved. Guessing should be avoided. Interpreters who do not hear or understand what a speaker has said should seek clarification. Interpreter errors should be corrected as soon as possible.*

#### **2. Impartiality and Conflicts of Interest**

*Interpreters and translators are to remain impartial and neutral in proceedings where they serve, and must maintain the appearance of impartiality and neutrality, avoiding unnecessary contact with the parties. Interpreters and translators shall abstain from comment on matters in which they serve. Any real or potential conflict of interest shall be immediately disclosed to Lucienne Andrew and all parties as soon as the interpreter or translator becomes aware of such conflict of interest.*

#### **3. Confidentiality**

*Privileged or confidential information acquired in the course of interpreting or preparing a translation shall not be disclosed by the interpreter without authorization.*

#### **4. Limitations of Practice**

*Interpreters and translators shall limit their participation in those matters in which they serve to interpreting and translating, and shall not give advice to the parties or otherwise engage in activities that can be construed as the practice of law.*

**5. Protocol and Demeanor**

*Interpreters shall conduct themselves in a manner consistent with the standards and protocol of the Westerly Housing Authority and shall perform their duties as unobtrusively as possible. Interpreters are to use the same grammatical person as the speaker. When it becomes necessary to assume a primary role in the communication, they must make it clear that they are speaking for themselves.*

**6. Maintenance and Improvement of Skills and Knowledge**

*Interpreters and translators shall strive to maintain and improve their interpreting and translation skills and knowledge.*

**7. Accurate Representation of Credentials**

*Interpreters and translators shall accurately represent their certifications, accreditations, training and pertinent experience.*

**8. Impediments to Compliance**

*Interpreters and translators shall bring to the Executive Director's attention any circumstance or condition that impedes full compliance with any Canon of this Code, including interpreter fatigue, inability to hear, or inadequate knowledge of specialized terminology, and must decline assignments under conditions that make such compliance patently impossible.*

**1. Training**

*Staff will receive training on: the content of the language access policy; how to identify the need for language access services; working with an LEP and Deaf individuals; providing language accessible service in a culturally sensitive manner; working with an interpreter; and interpretation best practices.*

*(TIP: Contact the Interpretation Technical Assistance Resource Center for resources and assistance in training your staff.)*

**Internal Language Access Contacts**

**2. (Identify the Language Access Coordinator for your organization)**

**Monitoring and Assessment**

**3. Staff shall be responsible for monitoring compliance with the organizations language access policy.**

**4. Organization shall collect information on language use and need, including: primary language of clients; use and language of interpretation services; distribution of translated documents; frequency of contact with LEP or Deaf individuals seeking services; and referrals of LEP or Deaf individuals and the language of the referred LEP or Deaf individual.**

5. *Organization shall conduct (how frequently?) a review on the effectiveness of the language access policy and make changes as needed.*

### ***Complaint Process***

1. *A complaint regarding the denial of language accessible services, or regarding the quality of language accessible services, including interpreters or translated materials, may be made in person, or in writing.*
2. *The complaint should specify the date, individuals involved, and the nature of the client (i.e. the interpreter was summarizing, or an LEP individual or Deaf individual was denied services because they did not bring their own interpreter).*
3. *All complaints will be directed to the Language Access Coordinator.*
4. *The Language Access Coordinator will notify the parties within 30 days upon receipt of the complaint of the outcome.*
5. *Staff will notify individuals of the complaint process.*
6. *The complaint process will be included in the posted notification of the right to an interpreter.*

LANGUAGE IDENTIFICATION FLASHCARD

- |                          |  |                        |
|--------------------------|--|------------------------|
| <input type="checkbox"/> | ضع علامة في هذا المربع إذا كنت تقرأ أو تتحدث العربية.                          | 1. Arabic              |
| <input type="checkbox"/> | Խորհրդով՝ ենք նշում կատարեք այս քառակուսով՝ եթե խոսում կամ կարդում եք հայերեն: | 2. Armenian            |
| <input type="checkbox"/> | যদি আপনি বাংলা পড়েন বা বলেন তা হলে এই বাক্সে দাগ দিন।                         | 3. Bengali             |
| <input type="checkbox"/> | ល្អប្រសើរណាស់ប្រសិនបើ លើក្រអូប ឬនិយាយភាសា ខ្មែរ ។                              | 4. Cambodian           |
| <input type="checkbox"/> | Motka i kahhon ya yangin ûntûngnu' manaitai pat ûntûngnu' kumentos Chamorro.   | 5. Chamorro            |
| <input type="checkbox"/> | 如果你能读中文或讲中文, 请选择此框。  | 6. Simplified Chinese  |
| <input type="checkbox"/> | 如果你能讀中文或講中文, 請選擇此框。  | 7. Traditional Chinese |
| <input type="checkbox"/> | Označite ovaj kvadratić ako čitate ili govorite hrvatski jezik.                | 8. Croatian            |
| <input type="checkbox"/> | Zaškrtněte tuto kolonku, pokud čtete a hovoříte česky.                         | 9. Czech               |
| <input type="checkbox"/> | Kruis dit vakje aan als u Nederlands kunt lezen of spreken.                    | 10. Dutch              |
| <input type="checkbox"/> | Mark this box if you read or speak English.                                    | 11. English            |
| <input type="checkbox"/> | اگر خواندن و نوشتن فارسی بلد هستید، این مربع را علامت بزنید.                   | 12. Farsi              |

- Cocher ici si vous lisez ou parlez le français. 13. French
- Kreuzen Sie dieses Kästchen an, wenn Sie Deutsch lesen oder sprechen. 14. German
- Σημειώστε αυτό το πλαίσιο αν διαβάσετε ή μιλάτε Ελληνικά. 15. Greek
- Make kazye sa a si ou li oswa ou pale kreyòl ayisyen. 16. Haitian Creole
- अगर आप हिन्दी बोलते या पढ़ सकते हैं तो इस बक्स पर चिह्न लगाएँ। 17. Hindi
- Kos lub voj no yog koj paub twm thiab hais lus Hmoob. 18. Hmong
- Jelölje meg ezt a kockát, ha megérti vagy beszéli a magyar nyelvet. 19. Hungarian
- Markaam daytoy nga kahon no makabasa wenno makasaoka iti Ilocano. 20. Ilocano
- Marchi questa casella se legge o parla italiano. 21. Italian
- 日本語を読んだり、話せる場合はここに印を付けてください。 22. Japanese
- 한국어를 읽거나 말할 수 있으면 이 칸에 표시하십시오. 23. Korean
- ໃຫ້ໝາຍໃສ່ຊ່ອງນີ້ ຖ້າທ່ານອ່ານຫຼືປາກພາສາລາວ. 24. Laotian
- Prosimy o zaznaczenie tego kwadratu, jeżeli posługuje się Pan/Pani językiem polskim. 25. Polish



- Assinale este quadrado se você lê ou fala português. 26. Portuguese
- Însemnați această căsuță dacă citiți sau vorbiți românește. 27. Romanian
- Пометьте этот квадратик, если вы читаете или говорите по-русски. 28. Russian
- Обележите овај квадратик уколико читате или говорите српски језик. 29. Serbian
- Označte tento štvorček, ak viete čítať alebo hovoriť po slovensky. 30. Slovak
- Marque esta casilla si lee o habla español. 31. Spanish
- Markahan itong kuwadrado kung kayo ay marunong magbasa o magsalita ng Tagalog. 32. Tagalog
- ให้กาเครื่องหมายลงในช่องดำผ่านอ่านหรือพูดภาษาไทย. 33. Thai
- Maaka 'i he puha ni kapau 'oku ke lau pe lea fakatonga. 34. Tongan
- Відмітьте цю клітинку, якщо ви читаете або говорите українською мовою. 35. Ukrainian
- اگر آپ اردو پڑھتے یا بولتے ہیں تو اس خانے میں نشان لگائیں۔ 36. Urdu
- Xin đánh dấu vào ô này nếu quý vị biết đọc và nói được Việt Ngữ. 37. Vietnamese
- באצייכנט דעם קעסטל אויב איר לייענט אדער רעדט אידיש. 38. Yiddish



## 1. APPLICATIONS FOR ADMISSION

### A. General Conditions

1. Under no circumstances will anyone be denied the right to request or submit an application for housing, unless the WHA has publicly announced the temporary closing of all or part of the Waiting List
2. Applications will be accepted at Westerly Housing Authority office at 5 Chestnut Street, Westerly, RI 02891 Monday through Friday 8:00am to 4:00pm. Applications will also be accepted via email at [westerlyha@westerlyhousing.org](mailto:westerlyha@westerlyhousing.org), or by mail (United States Postal Service).
3. A completed written application form, signed by the Head, Co-Head or Spouse of the applicant's family, will be obtained from all applicants seeking admission to housing.
4. If there is no waiting list and upon receipt of the application, the WHA staff will interview the applicant and explain the application, verification and screening process. If there is a waiting list correspondence with the tenant will occur electronically or via mail informing the applicant of the process and anticipated time until a unit can be made available. The applicant will be informed that all changes to information on the family size, income, status, and address will need to be kept current during the waiting period.
5. The application package at a minimum will consists of:
  - a. Application Form
  - b. Personal declaration
  - c. Applicant Certification
  - d. Information Concerning Citizenship Verification
  - e. Citizenship Declaration Form/Certification of Non-eligible Immigrant Status (if applicable)
  - f. Authorization for Release of Information/Privacy Act Notice
  - g. Criminal History Check Acknowledgment Form
  - h. Waiting List Policy Statement
  - i. "Things You Should Know" Brochure
  - j. Applicable Verification Forms
  - k. Community Service Policy/Exempt Forms
  - l. Supplemental and Optional Contact Information for HUD- Assisted Housing Applicants (HUD- 92006)
  - m. Eligibility Criteria - (required by state law)
  - n. Debts Owed EIV, HUD-52675
  - o. HUD 9886 Authorization for the Release of Information.

7. At the initial visit, the family will complete and sign the application form and sign all certifications and releases. It is important at the first visit that enough information is obtained to make a preliminary determination of eligibility.

8. The WHA will work on the assumption that the facts certified by the applicant in the application are correct, although all those facts will be subject to verification later in the application process.

9. As soon as the WHA has a completed, signed application form, the application will be marked with the date, time and income priority and immediately placed on the Waiting List, which is subdivided according to number of bedrooms and type (elderly/non-elderly).

10. Every applicant who submits a completed, signed application form will immediately be placed on the Waiting List, regardless of whether or not all other application documents have been submitted and regardless of whether or not the applicant initially appears eligible.

*B. Preliminary Determination of Eligibility*

1. *Within approximately thirty (30) days following the interview, a preliminary review of the applicant's file will take place to check for apparent eligibility or ineligibility based on the statements made on the application and signed certifications.*

2. *A review of PHA internal records will be made to determine if an applicant has participated in any of the programs administered by this PHA or any other Housing Assistance program and left the program owing unpaid rent, damages, vacancy loss, or other charges. Such an applicant will not be determined eligible until all funds are repaid in full.*

3. *Applicant Determined Preliminarily Ineligible:*

*a. An applicant who is determined to be ineligible because of information on the application (e.g., over income) or a record of a prior eviction from public housing or debts owing, will be notified in writing of the ineligibility. Notice will:*

*1) specify reasons why ineligible*

*2) inform applicant that he or she has ten (10) days after receipt of this notice to request a hearing in writing.*

*3) if the only reason for denial is money owed to the PHA or another housing agency, inform applicant that he or she has fourteen (14) days to repay the debt or be removed from the waiting list.*

b. *Applicant is removed from Waiting List.*

c. *Once the decision to deny is made, the application will be filed and kept for three (3) years.*

4. *Applicant Determined Eligible:*

*Eligible applicants will be notified in writing or by telephone, of the following:*

a. *that they have been placed on the Waiting List according to the date and time of their application.*

b. *an approximate date applicant is to be housed, determined to the best of the PHA's ability.*

c. *that it is their responsibility to submit the rest of their documents, if applicable, within the next six (6) months or sooner if requested by the PHA, as well as report any change in income priority status.*

d. *that they will receive notification from the PHA when their name is close to the top of the Waiting List and final verifications are to be processed*

e. *that, if they do not hear from the PHA by the end of the six (6) month period, it is their responsibility to contact the PHA to update their information and express interest in remaining on the Waiting List. Otherwise, they will be dropped from the List unless they have, at initial application, requested assistance with communication as a reasonable accommodation of their disability. Such assistance in updating the Waiting List could include the PHA contacting the applicant with a disability or a designated friend, relative or representative rather than requiring the applicant to contact the PHA.*

C. *The Waiting List will reflect for each application the following information and will be consistent with Title VI objectives and other requirements:*

1. *the date and time of receipt; race and ethnicity of head of household*

2. *Income priority status*

3. *the determination by the PHA as to preliminary eligibility or ineligibility*

4. *date determined eligible or ineligible*

5. *the unit size(s) for which eligible*

6. *the date, location, identification and circumstances of each vacancy offered and accepted or denied.*

*D. Timetable for Final Verifications*

1. *If there are applicants on the Waiting List, final verification of all application information submitted by the family will be conducted by ninety (90) days prior to the estimated time the applicant will be offered a unit.*

2. *When an applicant is approximately within thirty (30) days of being at the top of the Waiting List, PHA staff will begin the applicant screening process, according to this policy and the PHA's Screening Procedures.*

3. *If there is no one on the Waiting List, verifications and screening will begin immediately after all completed application paperwork has been submitted by the family.*

## **2. ELIGIBILITY FOR ADMISSION**

- A. *It is the PHA's policy to admit only qualified applicants.*
- B. *An applicant is qualified if he or she meets all of the following criteria:*
  - 1. *Is a family as defined in this Policy;*

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

- 1) *A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person;*
- 2) *A group of persons residing together, and such group includes, but is not limited to:*
  - a) *A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family).*
  - b) *An elderly family, which is defined as a family whose head, co-head, spouse, or sole member is at least 62 years of age. It may include two or more persons, each of whom are at least 62, living together; or one or more persons who are at least 62 living with one or more live-in aides.*
  - c) *A near-elderly family, which is defined as a family whose head, co-head, spouse, or sole member is at least 50 years of age but below the age of 62; or two or more persons, each of whom are between the ages of 50 and 62, living together; or one or more persons who are between the ages of 50 and 62 living with one or more live-in aides.*
  - d) *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. i) 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-continued and indefinite duration, substantially impedes his or her ability to live 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) (formerly codified in 42 U.S.C. § 6001).*
  - ii) *Important considerations: (1) The meaning of "a person with disabilities" does not exclude persons who have the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the virus that causes AIDS.*
    - (2) *The meaning of "a person with disabilities" does not include a person whose disability is based solely on a dependency to any drug or alcohol (for eligibility purposes).*

*(3) A person who qualifies as a “person with disabilities” also qualifies as an individual with disabilities for purposes of protections under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Fair Housing Act, including reasonable accommodation and program accessibility for persons with disabilities.*

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

*f) A remaining member of a tenant family where other members of the family are no longer in the unit.*

*2. Is a family that meets the HUD requirements on citizenship or immigration status; (24 CFR § 5.500 - 5.528) see Definitions under Citizenship.*

*a. A family is not eligible for FULL housing assistance unless every member of the family in the unit is determined to be either a U.S. citizen or have eligible immigrant status as defined by the regulations. Families who are a Mixed family will have their assistance prorated in accordance with HUD regulations.*

*b. A Mixed Family (in which one or more family members is determined to be ineligible on the basis of immigration status) may be eligible for prorated assistance.*

*3. Has an Annual Income at the time of admission that does not exceed the low-income limits for occupancy, as established by HUD, and posted separately in the PHA office.*

*4. Provides a documented Social Security Number for all family Members. (24 CFR § 5.216) which states:*

**§ 5.216 Disclosure and verification of Social Security and Employer Identification Numbers.**

*(a) **General.** The requirements of this section apply to applicants and participants as described in this section, except that this section is inapplicable to individuals who do not contend eligible immigration status under subpart E of this part (see § 5.508).*

*(b) **Disclosure required of assistance applicants.** Each assistance applicant must submit the following information to the processing entity when the assistance applicant's eligibility under the program involved is being determined.*

*(1) The complete and accurate SSN assigned to the assistance applicant and to each member of the assistance applicant's household; and*

*(2) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.*



**(c) Disclosure required of individual owner applicants.** Each individual owner applicant must submit the following information to the processing entity when the individual owner applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to the individual owner applicant and to each member of the individual owner applicant's household who will be obligated to pay the debt evidenced by the mortgage or loan documents; and

(2) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.

**(d) Disclosure required of certain officials of entity applicants.** Each officer, director, principal stockholder, or other official of an entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to each such individual; and

(2) The documentation referred to in paragraph (g)(1) of this section to verify each SSN.

**(e) Disclosure required of participants -**

**(1) Initial disclosure.**

(i) Each participant, except those age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010, must submit the information described in paragraph (e)(1)(ii) of this section, if the participant has:

(A) Not previously disclosed a SSN;

(B) Previously disclosed a SSN that HUD or the SSA determined was invalid; or

(C) Been issued a new SSN.

(ii) Each participant subject to the disclosure requirements under paragraph (e)(1)(i) of this section must submit the following information to the processing entity at the next interim or regularly scheduled reexamination or recertification of family composition or income, or other reexamination or recertification for the program involved:

(A) The complete and accurate SSN assigned to the participant and to each member of the participant's household; and

(B) The documentation referred to in paragraph (g)(1) of this section to verify each such SSN.

**(2) Subsequent disclosure.** Once a participant has disclosed and the processing entity has verified each SSN, the following rules apply:

(i) **Addition of new household member who is at least 6 years of age or under the age of 6 and has an assigned SSN.** When the participant requests to add a new household member who is at least 6 years of age, or is under the age of 6 and has an assigned SSN,

*the participant must provide the following to the processing entity at the time of the request, or at the time of processing the interim reexamination or recertification of family composition that includes the new member(s):*

*(A) The complete and accurate SSN assigned to each new member; and*

*(B) The documentation referred to in paragraph (g)(1) of this section to verify the SSN for each new member.*

***(ii) Addition of new household member who is under the age of 6 and has no assigned SSN.***

*(A) When a participant requests to add a new household member who is under the age of 6 and has not been assigned a SSN, the participant shall be required to provide the complete and accurate SSN assigned to each new child and the documentation referred to in paragraph (g)(1) of this section to verify the SSN for each new child within 90 calendar days of the child being added to the household.*

*(B) The processing entity shall grant an extension of one additional 90-day period if the processing entity, in its discretion, determines that the participant's failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant. During the period that the processing entity is awaiting documentation of a SSN, the processing entity shall include the child as part of the assisted household and the child shall be entitled to all the benefits of being a household member. If, upon expiration of the provided time period, the participant fails to produce a SSN, the processing entity shall follow the provisions of § 5.218.*

***(iii) Assignment of new SSN.*** *If the participant or any member of the participant's household has been assigned a new SSN, the participant must submit the following to the processing entity at either the time of receipt of the new SSN; at the next interim or regularly scheduled reexamination or recertification of family composition or income, or other reexamination or recertification; or at such earlier time specified by the processing entity:*

*(A) The complete and accurate SSN assigned to the participant or household member involved; and*

*(B) The documentation referred to in paragraph (g)(1) of this section to verify the SSN of each individual.*

***(f) Disclosure required of entity applicants.*** *Each entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:*

*(1) Any complete and accurate EIN assigned to the entity applicant; and*

*(2) The documentation referred to in paragraph (g)(2) of this section to verify the EIN.*

***(g) Required documentation -***

*(1) SSN. The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraphs (a) through (e) of this section is:*

*(i) A valid SSN card issued by the SSA;*

*(ii) An original document issued by a federal or state government agency, which contains the name of the individual and the SSN of the individual, along with other identifying information of the individual; or*

*(iii) Such other evidence of the SSN as HUD may prescribe in administrative instructions.*

*(2) EIN. The documentation necessary to verify an EIN of an entity applicant that is required to disclose its EIN under paragraph (f) of this section is the official, written communication from the Internal Revenue Service (IRS) assigning the EIN to the entity applicant, or such other evidence of the EIN as HUD may prescribe in administrative instructions.*

***(h) Effect on assistance applicants.***

*(1) Except as provided in paragraphs (h)(2) and (3) of this section, if the processing entity determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide the documentation referred to in paragraph (g)(1) of this section to verify the SSN of each member of the household.*

*(2) For applicants to the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals under 24 CFR part 882, subpart H, the documentation required in paragraph (g)(1) of this section must be provided to the processing entity within 90 calendar days from the date of admission into the program. The processing entity shall grant an extension of one additional 90-day period if the processing entity, in its discretion, determines that the applicant's failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the applicant. If, upon expiration of the provided time period, the individual fails to produce a SSN, the processing entity shall follow the provisions of § 5.218.*

*(3) If a child under the age of 6 years was added to the assistance applicant household within the 6-month period prior to the household's date of admission (or, for the HCV program, the date of voucher issuance), the assistance applicant may become a participant, so long as the documentation required in paragraph (g)(1) of this section is provided to the processing entity within 90 calendar days from the date of admission into the program (or, for the HCV program, the effective date of the Housing Assistance Payment contract). The processing entity must grant an extension of one additional 90-day period if the processing entity determines that, in its discretion, the assistance applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the assistance applicant. If the applicant family fails to produce the documentation required in paragraph (g)(1) of this section within the required time period, the processing entity must follow the provisions of § 5.218.*

*(i) **Rejection of documentation.** The processing entity must not reject documentation referred to in paragraph (g) of this section, except as HUD may otherwise prescribe through publicly issued notice.*

*1. Meets or exceeds the Applicant Suitability Screening set forth in of this Policy (24 CFR § 960.205) which states:*

*§ 960.205 Drug use by applicants: Obtaining information from drug treatment facility.*

*(a) Purpose. This section addresses a PHA's authority to request and obtain information from drug abuse treatment facilities concerning applicants. This section does not apply to information requested or obtained from drug abuse treatment facilities other than under the authority of section 6(t).*

*(b) Additional terms used in this section are as follows:*

*(1) Currently engaging in illegal use of a drug. Illegal use of a drug occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.*

*(2) Drug abuse treatment facility. An entity:*

*(i) That holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use; and*

*(ii) That is either an identified unit within a general care facility; or an entity other than a general medical care facility.*

*(c) Authorization by household member for PHA to receive information from a drug abuse treatment facility.*

*(1) The PHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head or spouse regardless of age, one or more consent forms signed by such household member that:*

*(i) Requests any drug abuse treatment facility to inform the PHA only whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use;*

*(ii) Complies with the form of written consent required by 42 CFR 2.31; and*

*(iii) Authorizes the PHA to receive such information from the drug abuse treatment facility, and to utilize such information in determining whether to prohibit admission of the household member to the PHA's public housing program in accordance with § 960.203 which states:*

*§ 960.203 Standards for PHA tenant selection criteria.*

(a) *The tenant selection criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant and shall not be related to those which may be imputed to a particular group or category of persons of which an applicant may be a member. The PHA may use local preferences, as provided in § 960.206.*

(b) *Under the Public Housing Assessment System (PHAS), PHAs that have adopted policies, implemented procedures and can document that they successfully screen out and deny admission to certain applicants with unfavorable criminal histories receive points. (See 24 CFR 902.43(a)(5).) This policy takes into account the importance of screening to public housing communities and program integrity, and the demand for assisted housing by families who will adhere to lease responsibilities.*

(c) *In selection of families for admission to its public housing program, or to occupy a public housing development or unit, the PHA is responsible for screening family behavior and suitability for tenancy. The PHA may consider all relevant information, which may include, but is not limited to:*

(1) *An applicant's past performance in meeting financial obligations, especially rent;*

(2) *A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences which may adversely affect the health, safety or welfare of other tenants; and*

(3) *A history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants. (See § 960.204.) With respect to criminal activity described in § 960.204:*

(i) *The PHA may require an applicant to exclude a household member in order to be admitted to the housing program where that household member has participated in or been culpable for actions described in § 960.204 that warrants denial.*

(ii) *The PHA may, where a statute requires that the PHA prohibit admission for a prescribed period of time after some disqualifying behavior or event, choose to continue that prohibition for a longer period of time.*

(iii) *Before a PHA denies admission to, terminates the assistance of, or evicts an individual or household on the basis of criminal activity by a household member or guest, they must determine that the relevant individual engaged in such activity. PHAs are prohibited from denying admission or terminating assistance solely based on arrest records. Prior to evicting a tenant because of a guest's criminal activity, the PHA may consider whether the tenant was aware of the criminal activity or evidence that the guest is unlikely to return to the property. A tenant in a housing program covered by VAWA may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault,*

*or stalking if the criminal activity is engaged in by a member of the household, a guest, or a person under the control of the tenant and the tenant or an affiliated individual of the tenant is the victim or threatened victim. If the PHA decides to deny admission based on a criminal conviction record, the PHA must notify the family of the proposed action and must give the family an opportunity to dispute the accuracy and/or relevance of the record. A copy of the criminal conviction record must be provided to the head of household and to the subject of the record (if not the head of household). If the family does not dispute the record, or if the family disputes the record but the PHA rejects the families' dispute, a denial notice must be sent. The notification of a proposed action on the basis of a criminal record is a regulatory requirement and is separate from the PHA's informal review procedures.*

*PHAs must deny admission when:*

- 1. Any household member has been convicted of manufacturing methamphetamines on the premises of federally assisted housing.*
- 2. Any household member is subject to a lifetime sex offender registration requirement. • The PHA must check for sex offender registration in its own state and in any other state where the family has resided. Use of a nationwide database such as [www.nsopw.org](http://www.nsopw.org) is recommended to conduct this required check.*
- 3. The PHA determines that a household member is currently engaging in illegal drug use.*
- 4. The PHA has reasonable cause to believe that other tenants' health, safety or right to peaceful enjoyment may be threatened by a household member's:*
  - Illegal drug use or pattern of illegal drug use, or*
  - Abuse or pattern of abuse of alcohol.*
- 5. A household member has been evicted from federally assisted housing within the last three years for drug-related criminal activity.*

*The PHA may admit the family, however, if it determines that the household member who engaged in the activity has successfully completed a supervised rehabilitation program, or the circumstances no longer exist (for example, the household member has died or is imprisoned). The term "admission" includes and applies to a person seeking to become a new member of an already-existing household. For example, PHAs must prohibit a person subject to a lifetime sex offender registration requirement from becoming a new member of an already-existing household (e.g., being added to an already-existing lease). Such addition to the existing household would constitute a new "admission" for the added individual proposed action on the basis of a criminal record is a regulatory requirement and is separate from the PHA's informal review procedures.*

*Mandatory and discretionary denials of admission for criminal activity or drug abuse are summarized below:*

<i>Type of Criminal Activity or Offense/Drug Abuse</i>	<i>Action</i>
<i>Convicted of producing methamphetamine on the premises of federally assisted housing</i>	<i>Mandatory denial.</i>
<i>Subject to a lifetime registration requirement under a State sex offender program</i>	<i>Mandatory denial.</i>
<i>Determined to be currently engaging in illegal use of a controlled substance</i>	<i>Mandatory denial</i>
<i>Reasonable cause to believe that illegal use or pattern of illegal use of a controlled substance or abuse or pattern of abuse of alcohol may interfere with the health, safety or right to peaceful enjoyment of the premises by other residents</i>	<i>Mandatory denial</i>
<i>Evicted from federally assisted housing for drug-related criminal activity within the last three years, UNLESS</i> <ul style="list-style-type: none"> <li>• <i>The circumstances leading to the eviction no longer exist, or</i></li> <li>• <i>The evicted household member has successfully completed an approved supervised drug rehabilitation program</i></li> </ul>	<i>Mandatory 3-year denial on admission, except if specified conditions are met then PHA may exercise discretion</i>
<i>History of drug-related criminal activity</i>	<i>Discretionary denial</i>
<i>History of violent criminal activity</i>	<i>Discretionary denial</i>
<i>History of criminal activity that adversely affects the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, persons residing in the immediate vicinity of the premises, or public housing agency employees</i>	<i>Discretionary denial</i>

(6) PHA tenant selection criteria are subject to 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). In cases of requests for emergency transfers under VAWA, with the written consent of the victim of domestic violence, dating violence, sexual assault, or stalking, the receiving PHA may accept and use the prior covered housing provider's determination of eligibility and tenant screening and all related verification information, including form HUD 50058 (Family Report).

(a) In the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense).

(1) In a manner consistent with the PHA's policies, procedures and practices referenced in paragraph (b) of this section, consideration may be given to factors which might indicate a reasonable probability of favorable future conduct. For example:

(i) Evidence of rehabilitation; and

(ii) *Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs and the availability of such programs;*

(2) *Consideration of rehabilitation.*

(i) *In determining whether to deny admission for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA 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 PHA may require the applicant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.*

(ii) *If rehabilitation is not an element of the eligibility determination (see § 960.204(a)(1)), the PHA may choose not to consider whether the person has been rehabilitated.*

(2) *The consent form submitted for a proposed household member must expire automatically after the PHA has made a final decision to either approve or deny the admission of such person.*

(d) *PHA request for information from drug use treatment facility.*

(1) *The PHA may request that a drug abuse treatment facility disclose whether the drug abuse treatment facility has reasonable cause to believe that the proposed household member is currently engaging in the illegal use of a drug (as defined in § 5.100 of this title).*

(2) *The PHA's request to the drug abuse treatment facility must include a copy of the consent form signed by the proposed household member.*

(3) *A drug abuse treatment facility is not liable for damages based on any information required to be disclosed under this section if such disclosure is consistent with section 543 of the Public Health Service Act (42 U.S.C. 290dd-2).*

(4) *The PHA is not obligated to request information from a drug treatment facility under this section, and is not liable for damages for failing to request or receive such information.*

(5) *A drug abuse treatment facility may charge the PHA a reasonable fee for information provided under this section. The PHA may not pass along to the applicant or tenant the costs of obtaining this information.*



(e) *Prohibition of discriminatory treatment of applicants.*

(1) *A PHA may request information from a drug abuse treatment facility under paragraph (d) of this section only if the PHA has adopted and has consistently implemented either of the following policies, obtaining a signed consent form from the proposed household members:*

(i) *Policy A - Request for all families. Under Policy A, the PHA must submit a request for information to a drug abuse treatment facility in accordance with paragraph (d) of this section before admitting any family to the PHA's public housing program. For each such family, the request must be submitted for each proposed household member described in paragraph (c)(1) of this section.*

(ii) *Policy B - Request for certain household members. Under Policy B, the PHA must submit a request to a drug abuse treatment facility only with respect to each proposed household member:*

(A) *Whose criminal record indicates prior arrest or conviction for any criminal activity that may be a basis for denial of admission under § 960.205; or*

(B) *Whose prior tenancy records indicate that the proposed household member:*

(1) *Engaged in the destruction of property;*

(2) *Engaged in violent activity against another person; or*

(3) *Interfered with the right of peaceful enjoyment of the premises of other residents.*

(4) *The policy adopted by the PHA must be included in the PHA administrative plan and the PHA plan.*

(f) *Records management and confidentiality. Each PHA that receives information from a drug abuse treatment facility under this section must establish and implement a system of records management that ensures that any information which the PHA receives from the drug abuse treatment facility about a person:*

(1) *Is maintained confidentially in accordance with section 543 of the Public Health Service Act (12 U.S.C. 290dd-2);*

(2) *Is not misused or improperly disseminated; and*

(3) *Is destroyed, as applicable:*

(i) *Not later than 5 business days after the PHA makes a final decision to admit the person as a household member under the PHA's public housing program; or*

(ii) *If the PHA denies the admission of such person as a household member, in a timely manner after the date on which the statute of limitations for the commencement of a civil action based upon that denial of admissions has expired without the filing of a civil action or until final disposition of any such litigation.*

(iii) *Records Retention and Confidentiality*

*Because there are strict penalties for improper disclosure of criminal conviction records, the PHA must establish procedures aimed at maintaining confidentiality. Criminal records must be maintained confidentially and may only be disclosed to persons within the PHA with a job-related need to know the contents. Criminal background records, including sex offender registration information must be destroyed promptly once the purpose has been served. For example, if the PHA decides to admit the family to the PH program, the records must be destroyed immediately. If the PHA decides to deny admission based on a criminal conviction record, the record may be retained during the period allowed for requesting an informal review, and until the review, if requested, has been completed. The record must then be destroyed promptly. The PHA must not retain criminal conviction records for longer periods, even if the records are stored separately from the family's file.*

*In addition, any information an individual submits regarding medical or other information to support an individual's reasonable accommodation request, including reasonable accommodation requests related to a PHA's decision to deny admission based on a criminal record, must be kept confidential. Additionally, if the individual has represented that they are a victim of domestic violence, dating violence, sexual assault, or stalking while invoking rights under VAWA, any information they submit must be kept strictly confidential*

1. *Is not already adequately housed in any PHA-owned dwelling unit.*
2. *Owes no money to PHA or any other housing authority in connection with any Federal housing program.*

### **3. ADMISSION PRIORITIES AND SPECIAL CIRCUMSTANCES**

#### **A. Deconcentration and Income Targeting**

*In its assignment of units, the PHA will, to the maximum extent possible, avoid the concentration of the most economically and socially deprived families in any one or all of its developments, in an attempt to achieve a broad range of incomes.*

1. *Applicants will be grouped according to the following priorities based on income ranges:*

a. *Priority 1: Families with incomes between 0% and 30% of the area median income*

b. *Priority 2: Families with incomes between 31% and 80% of the area median income (target is 60% of admissions)*

2. *As required by the Quality Housing Responsibility Act of 1998, at least 40 percent of the families admitted during the fiscal year must be admitted from Priority 1. In order to ensure that at any given time the PHA has not fallen below the required 40%, the following test will be performed prior to each new admission:*

a. *Determine total number of admissions since start of the fiscal year*

b. *Add one to this total (the applicant about to be housed)*

c. *Determine number of families housed to-date with incomes at or below 30% of median*

d. *Divide c by b*

1) *if the result is .40 or greater, next admission may have an income greater than 30%*

2) *If the result is less than .40, the next admission must have an income at or below 30% of median.*

A. *In order to prevent or correct concentrations of the lowest income families in any one project or portion of project, the PHA may skip over a Priority 1 family on the Waiting List in order to house a Priority 2 family with higher income.*

*NOTE: PHA may reduce the 40 percent target for public housing by exceeding the 75 percent minimum targeting requirement for admission of extremely low-income families in the PHA's Section 8 voucher program, not to exceed the lowest of the following: ten percent of the public housing waiting list admissions; ten percent of the Section 8 waiting list admissions; the number of low-income families (other than extremely low-income families) that Lease public housing units in high- poverty census tracts, defined as those with a poverty rate greater than 30 percent.*

*B. When selecting a family for a unit in housing designated for elderly families, the PHA will give a priority to elderly and near elderly; in housing designated for disabled families only disabled families will be admitted.*

*C. When selecting a family for a unit with accessible features, the PHA will give priority to families that include disabled persons who can benefit from the unit's features.*

*D. If no family needing accessible features can be found for a unit with accessible features, the PHA will house a family not needing the features, subject to the procedures described in the Tenant Selection and Assignment Plan under this Policy. A non-disabled family in an accessible unit will be required to move so that a family needing the unit features can take advantage of the unit.*

*E. If determined necessary to increase security within a project, the PHA may rent a unit to a police officer who is not otherwise eligible.*

- 1. Rent and terms of the Lease will be negotiated between the PHA and the officer.*
- 2. The Officer must be employed full-time as a professional officer licensed by a federal, state or local government agency.*

## **1. THE WAITING LIST**

### **A. General Management**

1. *It is the policy of the PHA to administer its Waiting List as required by the regulations at 24 CFR § 960.*
2. *The PHA, at its discretion, may restrict application intake, suspend application intake, and close Waiting Lists in whole or in part. The PHA may open or close the list by unit size or type available.*
3. *At the time of initial intake, the PHA will advise families of their responsibility to notify the PHA when their circumstances, mailing address or phone numbers change.*
4. *If the head of an applicant household dies while the family is on the waiting list, and the family includes another adult, PHA will change the application to make the other adult the new applicant so long as the family reports the death within 30 days and requests that another adult family member be named the head.*
5. *Applicants whose family size or composition changes while on the waiting list will be able to change their applications in accordance with the following policy:*
  - a. *Children who have been added to the family through birth adoption or court awarded custody to people already listed on the application will be added. PHA will require that the addition of children under 18 to the Household where the child is not the biological parent will be accomplished only by court order and signed by a presiding Judge.*
  - b. *Individuals who can document that they need a live-in aide (even though not included on the original application) will be permitted to add the Live-In Aide as long as the Live in Aide meets the requirements. See Income inclusions and exclusions for treatment of the Live in Aide income.*
  - c. *Other adults will NOT be added to an application unless their addition would not change the unit size for which the family qualifies, although the family may file a different application with a different family composition when the waiting list is open.*

### **B. Closing the Waiting List**

1. *Decisions about closing the Waiting List will be based on:*

- a. *the number of applications available for a particular size and type of unit,*
- b. *the ability of the PHA to house an applicant in an appropriate unit within a reasonable period of time*
- 2. *Decisions to close the Waiting List, restrict intake or open the Waiting List will be publicly announced.*
- 3. *During the period when the Waiting List is closed, the PHA will not maintain a list of individuals who wish to be notified when the waiting list is re-opened.*
- 4. *When the waiting list is closed or re-opened, a sign will be placed in the lobby (office, window) and an advertisement will be placed in the newspaper. The sign and ad will indicate which parts of the Waiting List are affected (program, type and bedroom size).*
- C. *Removal of Applications from Waiting List*
  - 1. *The PHA will remove an applicant's name from the Waiting List under the following circumstances:*
    - a. *The applicant requests that the name be removed.*
    - b. *The applicant has failed to advise the PHA of his/her continued interest in being on the Waiting List. The PHA requires applicants to notify the PHA of continued interest on a six (6) month basis (subject to reasonable accommodation for persons with disabilities--see Section V B 4 e) This includes advising the PHA of any changes in family status, priority status, or in physical or mailing address.*
    - c. *The PHA has made reasonable efforts to contact the applicant to schedule interviews or obtain information necessary to complete the application process and the applicant has failed to respond. In this case, the PHA will notify the applicant in writing or by telephone that he/she has ten (10) days within which to reschedule the interview or provide the needed information. If applicant fails to respond within that period, the application will be withdrawn.*
    - d. *The applicant has failed to pay an outstanding balance owed to the PHA.*
    - e. *The PHA has notified the applicant of its intention to remove the applicant's name because the applicant was determined ineligible based on preliminary information on the application or pursuant to the verification process.*

*In this case, the applicant may request an Informal Hearing for Denials. He/she must respond in writing within ten (10) days of receipt of the written notification.*

- f. PHA finds that the applicant has provided false information regarding family income composition, preferences or other circumstances affecting their eligibility or rent level.*
  - g. The applicant accepts an offer and is housed.*
- 2. The PHA will consider mitigating circumstances such as disabilities, health problems or lack of transportation in determining if the application should be withdrawn.*
  - 3. Persons whose applications are withdrawn or who are denied may not reapply for twelve (12) months from the date of withdrawal or denial.*





## 2. OCCUPANCY STANDARDS

A. *It is the PHA's policy that units should be occupied by families of the appropriate size. This policy maintains the usefulness of the units while preserving them from excessive wear and tear.*

### B. *Occupancy Guidelines*

*The following minimum and maximum number of persons per unit guide will govern the number of bedrooms required to accommodate a family of a given size and composition:*

<i>Number of Bedrooms</i>	<i>Minimum</i>	<i>Maximum</i>
0	1	1
1	1	2
2	2	4
3	3	6
4	4	8

C. *Families may choose to be placed on the waiting list for a unit one bedroom size smaller than that designated on the chart. A family that chooses to occupy a smaller size unit must agree not to request a transfer until their family size changes.*

D. *Under the minimum-number-of-persons-per-unit standard, generally two people will share a bedroom, except that units will be so assigned that:*

- 1. It will not be necessary for persons of different generations or opposite sex, other than husband and wife, to occupy the same bedroom except at the request of the family.*
- 2. Exceptions to these standards may be made in the case of reasonable accommodations for a person with disabilities.*
- 3. An unborn child will not be counted as a person in determining unit size. A single pregnant woman may be assigned to a one-bedroom unit.*
- 4. In determining unit size, the PHA will consider a child who*

*is temporarily away from home because of placement in foster care, kinship care or away at school.*

5. *Two children of the opposite sex will not be required to share a bedroom except at the request of the family. Two children of the same sex are expected to share a bedroom, regardless of their ages.*
6. *The living room or dining room will not be considered as a bedroom when determining the minimum size unit for which a family qualifies.*
7. *A single head of household parent will not be required (but may choose) to share a bedroom with his/her child.*
8. *A live-in attendant may be assigned a bedroom.*
9. *For verified reasons of medical or health problems, a separate bedroom may be provided for an individual family member.*
10. *A single person who is not elderly, disabled, displaced or the remaining member of a resident family, may not be placed in a larger than one bedroom unit.*

*E. At the discretion of the PHA, families may be permitted to exceed the maximum as shown on the chart when the family requests such occupancy, and when the PHA determines that the unit in question is large enough.*

*F. In any case, no larger unit will be held vacant due to lack of appropriate-sized family on the Waiting List, if it is not financially feasible to do so.*

*G. In assigning unit sizes, the PHA will take into account different cultural standards, length of time the family would have to wait for smaller versus larger units, and the age, relationship and sex of family members.*

### 3. TENANT SELECTION

#### **PREFERENCES**

The PHA will select families based on the following preferences within each bedroom size category based on our local housing needs and priorities:

*Families of Federally Declared Disasters who are Section 8 Voucher holders or public housing residents in another jurisdiction will receive preference over other waiting list placeholders for public housing, and displaced public housing residents will receive preference over other waiting list families for admission to the voucher program.*

*Displaced victims through no fault of their own which are current residents of the PHA.*

**Residency** preferences for Westerly Housing Authority, Westerly, RI. *Use of a residency preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on race, color, ethnic, origin, gender, religion, disability, or age of any member of an applicant family.*

*A residency preference is not based on how long an applicant has resided or worked in a residency preference area.*

*Applicants who are working or who have been notified that they are hired to work in a residency preference area will be treated as residents of the residency preference area. Work is defined as: where the head, spouse or sole member is employed by a third party for at least the minimum wage.*

*If the residency or work preference status changes, the application date is updated to reflect the verified date of the preference change.*

**Veteran Preference** the Authority shall provide a preference for any active-duty United States service member or veteran. The preference shall be extended to:

1. *The household of which the service member or veteran is a member.*
2. *The surviving household members of a deceased service member or veteran who dies of service-connected causes, provided:*
  - a. *The death occurred during active-duty service or within five years of discharge from service.*
  - b. *The death occurred not more than five years from the date of application for housing.*

*The preference established by this section shall be cumulative with any other preference allowed by the Housing Authority for which the applicant qualifies, so that service members or veterans have priority over nonservice members and nonveterans within each preference category.*

*Nothing in this section shall be construed to supersede:*

1. Any Federal law or regulation relating to or local preferences adopted pursuant to Federal law.
2. Any Federal law or regulation concerning tenant eligibility and selection or local criteria adopted pursuant to Federal law. If you do not want a Veterans Preference, delete that section.

**Income Targeting/Local Preference** – PHA will choose applicants from the Public Housing waiting list by the following tiers:

Tier I – Extremely Low Income: Families with incomes between 0 percent and 30 percent of area median income – this group must constitute at least 40 percent of all new admissions in any year.

\*Tier II – Very Low Income: Families with incomes between 31 percent and 50 percent of area median income.

\*Tier III – Low Income: Families with incomes between 51 percent and 80 percent of area median income.

\*Tier IV – Over Income

\*The maximum percentage of annual admissions from Tier II and Tier III cannot exceed 60 percent of all new admissions in any year.

If PHA has met the requirements of Tier I (extremely low) as stated in CFR 24 §960.202 (1) (i), the first eligible applicant from Tier III (low income) will be notified before an applicant from Tier II (very low). If there are no eligible applicants from Tier III or Tier II on the waiting list then the first eligible applicant from Tier I will be notified of the vacancy.

The date and time of application will be noted and utilized to determine the sequence within the above-prescribed preferences.

Notwithstanding the above, families who are elderly, disabled, or displaced will be offered housing before other single persons.

**Buildings Designed for the Elderly and Disabled (Mixed Population Developments):** Preference will be given to elderly and disabled families equally in determining priority for admission. PHA will not establish a limit on the number of elderly families or disabled families who may be accepted for occupancy in a mixed population development. In selecting elderly families and disabled families to occupy units, PHA will first offer unit that has special accessibility features for persons with disabilities to families who include persons with disabilities who require the accessibility features of such units. If there are no elderly or disabled families on the list, preference will then be given to near-elderly families. If there are no near-elderly families on the waiting list, units will be offered to families who qualify for the appropriate bedroom size using these priorities. All such families will be selected from the waiting list using the preferences as outlined above.

***Accessible Units:** Accessible units will be first offered to families who may benefit from the accessible features who reside in the development that has the vacancy. If there are no families residing in that development needing the accessible unit, it shall then be offered to families residing in other developments who may benefit from the accessible unit. If there are no families residing in the other developments needing the accessible unit, it shall then be offered to applicants on the waiting list who may benefit from the accessible features. Applicants for these units will be selected utilizing the same preference system as outlined above.*

*If there are no applicants who would benefit from the accessible features, the units will be offered to other applicants in the order that their names come to the top of the waiting list. Such applicants, however, will be requested to sign a lease rider stating they will accept a transfer (at their own expense) if, at a future time, a family requiring an accessible feature applies or a family requires a transfer from a non-accessible unit. Any family required to transfer will be given a 30-day notice.*

*If there are no accessible units for an applicant, the PHA will modify an available unit, if possible and/or to the greatest extent possible. If that is not possible, a non-accessible unit must be offered to the family until such time as the family's needs can be met.*

#### **FAMILIES OF FEDERALLY DECLARED DISASTERS**

*In the case of a federally declared disaster, the PHA reserves the right for its Executive Director to suspend its preference system for whatever duration the Executive Director feels is appropriate and to admit victims of the disaster to the program instead of those who would be normally admitted. Any other provisions of this policy can also be suspended during the emergency at the discretion of the Executive Director so long as the provision suspended does not violate a law. If regulatory waivers are necessary, they shall be promptly requested of the HUD Assistant Secretary for Public and Indian Housing.*



#### **4. DETERMINATION OF TOTAL TENANT PAYMENT AND TENANT RENT**

##### **FAMILY CHOICE**

*At admission and each year in preparation for their annual reexamination, each family is given the choice of having their rent determined under the income method or having their rent set at the flat rent amount.*

- A. Families who opt for the flat rent will be required to go through the income reexamination process every three years, rather than the annual review they would otherwise undergo. Their family composition must still be reviewed annually.*
- B. Families who opt for the flat rent may request to have a reexamination and return to the income-based method at any time for any of the following reasons:*
  - 1. The family's income has decreased.*
  - 2. The family's circumstances have changed increasing their expenses for childcare, medical care, etc.*
  - 3. Other circumstances creating a hardship on the family such that the income method would be more financially feasible for the family.*
- A. Families have only one choice per year except for financial hardship cases. In order for families to make informed choices about their rent options, the PHA will provide them with the following information whenever they have to make rent decisions:*
  - 1. The PHA's policies on switching types of rent in case of a financial hardship; and*
  - 2. The dollar amount of tenant rent for the family under each option. If the family chose a flat rent for the previous year, the PHA will provide the amount of income-based rent for the subsequent year only the year the PHA conducts an income reexamination or if the family specifically requests it and submits updated income information.*
  - 3. NPHOI families must pay the alternative rent when they've exceeded the grace period and are allowed by PHA policy the option of remaining in a public housing unit. During the 24 consecutive month grace period and in the 6 months before termination, the family will continue to pay their current rent choice amount (i.e. the family's choice of income-base or flat rent, or the prorated rent for mixed families).*

### **13.2 THE INCOME METHOD**

*The total tenant payment is equal to the highest of:*

- A. 10% of the family's monthly income;*
- B. 30% of the family's adjusted monthly income; or*
- C. If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of those payments which is so designated. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this provision is the amount resulting from one application of the percentage; or*
- D. The minimum rent of \$50.00 or the NPHOI rent.*

### **13.3 MINIMUM RENT**

*The PHA has set the minimum rent at \$50.00. If the family requests a hardship exemption, however, the PHA will suspend the minimum rent beginning the month following the family's request until the Housing Authority can determine whether the hardship exists and whether the hardship is of a temporary or long-term nature.*

- A. A hardship exists in the following circumstances:*
  - 1. When the family has lost eligibility for or is waiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is a non-citizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996;*
  - 2. When the family would be evicted because it is unable to pay the minimum rent;*
  - 3. When the income of the family has decreased because of changed circumstances, including loss of employment; and*
  - 4. When a death has occurred in the family.*
- B. No hardship. If the Housing Authority determines there is no qualifying hardship, the minimum rent will be reinstated, including requiring back payment of minimum rent for the time of suspension.*



- C. *Temporary hardship. If the Housing Authority reasonably determines that there is a qualifying hardship but that it is of a temporary nature, the minimum rent will be not be imposed for a period of 90 calendar days from the beginning of the suspension of the minimum rent. At the end of the 90-day period, the minimum rent will be imposed retroactively to the time of suspension. The Housing Authority will offer a repayment agreement in accordance with of this policy for any rent not paid during the period of suspension. During the suspension period the Housing Authority will not evict the family for nonpayment of the amount of tenant rent owed for the suspension period.*
- D. *Long-term hardship. If the Housing Authority determines there is a long-term hardship, the family will be exempt from the minimum rent requirement until the hardship no longer exists.*
- E. *Appeals. The family may use the grievance procedure to appeal the Housing Authority's determination regarding the hardship. No escrow deposit will be required in order to access the grievance procedure.*

#### **13.4 THE FLAT RENT**

*The PHA has set a flat rent for each public housing unit. The flat rent is determined annually, based on the market rental value of the unit using one of the following three options:*

- A. *Option One: The PHA will establish a flat rent for each public housing unit that is no less than 80 percent of the applicable Fair Market Rent (FMR);*
- B. *Option Two: No less than 80 percent of an applicable small area FMR (SAFMR) or 80% of the unadjusted rent<sup>1</sup>, if applicable, as determined by HUD, or any successor determination, that more accurately reflects local market conditions and is based on an applicable market area that is geographically smaller than the applicable market area used in the first paragraph of this section. If HUD has not determined an applicable SAFMR or unadjusted rent<sup>1</sup>, the PHA will rely on the applicable FMR under the first option or may apply for an exception flat rent under the third option. No other smaller geographical FMRs will be allowed by HUD; (See footnote 1 for HUD's definition of "unadjusted rent" as relates to Flat Rent requirements);*
- C. *Option Three: The PHA may request, and HUD may approve, on a case-by-case basis, a flat rent that is lower than the amounts in Options One or Two of this section, subject to the following requirements:*
  - 1. *The PHA must submit an acceptable market analysis of the applicable market.*

2. *The PHA must demonstrate, based on the market analysis, that the proposed flat rent is a reasonable rent in comparison to rent for other comparable unassisted units, based on the location, quality, size, unit type, and age of the public housing unit and any amenities, housing services, maintenance, and utilities to be provided by the PHA in accordance with the lease.*
3. *All requests for exception flat rents under this option must be submitted to and pre-approved by HUD. Upon request, exception rent can be extended up to two additional years by HUD.*

*The PHA will not implement Option Three prior to receiving HUD's written approval.*

*The option chosen to establish the required flat rent will be the sole decision of the PHA.*

*There is no utility allowance for families paying a flat rent because the PHA has already factored who pays for the utilities into the flat rent calculation. If the resident pays their own utilities, the calculated flat rent shall be reduced by a reasonable utility allowance based on an energy-conservative household of modest circumstances. Otherwise, the entire flat rent shall be paid by the resident to the PHA.*

*Annually, no later than 90 days after issuance of new FMRs or SAFMRs by HUD, the PHA will compare the current flat rent amount to the applicable FMR and SAFMR/unadjusted rent<sup>1</sup>. If the flat rent is at least 80 percent of the lower of the FMR or SAFMR/unadjusted rent, the PHA is in compliance with the law, and no further steps are necessary. If the flat rent is less than 80 percent of the lower of the FMR and SAFMR, the PHA will adjust the flat rents at no less than 80 percent of the lower of the FMR or SAFMR/unadjusted rent<sup>1</sup>, subject to the utilities adjustment required for tenant-paid utilities, or the PHA may request an exception flat rent pursuant to Option Three, as described above. Revised flat rents will become effective for all families admitted after the flat rent is changed or at the lease renewal for an existing resident. (See footnote 1 for HUD's definition of "unadjusted rent" as relates to Flat Rent requirements).*

*As for flat rent phase-ins, PIH notice 2022-33 and the subsequent FAQ's, HUD provided flexibility to PHAs to phase in all flat rent increases over a three-year period, including those increases that were 35 percent or less.*

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<sup>1</sup> The unadjusted rent is the FMR estimated directly from the American Community Survey (ACS) source data that HUD uses to calculate FMRs before HUD applies its state non-metropolitan minimum rent policy. HUD maintains a minimum FMR policy within Housing Choice Voucher program (HCV) in response to numerous public concerns that FMRs in rural areas were too low to operate the HCV program successfully. The policy establishes the FMRs at the higher of the local FMR or the State-wide average FMR of non-metropolitan counties, subject to a ceiling rent cap. The rationale for having a state minimum FMR is that some low-income, low-rent non-metropolitan counties have ACS-based FMR estimates that appear to be below long-term operating costs for standard quality rental units and raise concerns about housing quality. State minimum FMRs have been set at the respective state-wide population weighted median non-metropolitan rent level, but are not allowed to exceed the U.S. median non-metropolitan rent level.

*However, the FY 2015 Appropriations Act provides the PHA additional flexibility to establish flat rents at lower amounts, thereby eliminating the need for the three-year phase-in of flat rent increases that are 35 percent or less. Therefore, the only flat rent increases that will be phased-in are those where a family's rent will increase by more than 35 percent prior to any applicable adjustments for utility payments.*

*Agencies that began phase-ins for families with rent increases at 35 percent or less last year shall follow the actions outlined below at the family's next annual rent option:*

- 1) On a case-by-case basis, at the family's next annual rent option, compare the updated flat rent amount applicable to the unit to the rent that was being paid by the family immediately prior to the annual rent option;*
  - a. If the updated flat rent amount would not increase a family's rental payment by more than 35 percent, the family may choose to pay either the updated flat rent amount or the previously calculated income-based rent;*
  - b. If the agency determines that the updated flat rent amount would increase a household's rental payment by more than 35 percent, the family may choose to pay the phased-in flat rent amount resulting from the flat rent impact analysis or the previously calculated income-based rent.*

*Affected families will be given a 30-day notice of any rent change. Adjustments are applied at the end of the annual lease (for more information on flat rents, see Section 15.3).*

*The PHA will post the flat rents at each of the developments and at the central office. Flat rents are incorporated in this policy upon approval by the Board of Commissioners.*

### **13.5 CEILING RENT**

*The PHA has set a ceiling rent for each public housing unit prior to October 1, 1999. The amount of the ceiling rent will be reevaluated annually and the adjustments applied. It must equal or exceed the flat rent established by the PHA. Affected families will be given a 30-day notice of any rent change. Adjustments are applied on the anniversary date for each affected family.*

*The PHA will post the ceiling rents at each of the developments and at the central office. Ceiling rents are incorporated in this policy upon approval by the Board of Commissioners.*

### **13.6 RENT FOR FAMILIES UNDER THE NONCITIZEN RULE**

*A mixed family will receive full continuation of assistance if all of the following conditions are met:*

- A. *The family was receiving assistance on June 19, 1995;*
- B. *The family was granted continuation of assistance before November 29, 1996;*
- C. *The family's head or spouse has eligible immigration status; and*
- D. *The family does not include any person who does not have eligible status other than the head of household, the spouse of the head of household, any parent of the head or spouse, or any child (under the age of 18) of the head or spouse.*

*The family's assistance is prorated in the following manner:*

Steps for Prorating Assistance for Mixed Families		Example
1	Determine the Total Tenant Payment (TTP) in accordance with 24 CFR §5.628. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)	TTP = \$300
2	Family maximum rent is equal to the applicable flat rent for the unit size to be occupied by the family.	Flat Rent= \$500
3	Subtract the TTP from the family maximum rent. The result is the maximum subsidy for which the family could qualify if all members were eligible ("Family Maximum Subsidy").	\$500 - \$300 Family Maximum Subsidy = \$200
4	Divide the Family Maximum Subsidy by the number of persons in the family to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("Eligible Family Member"). The subsidy per eligible family member is the "Member Maximum Subsidy."	\$200 ÷ 4 persons = Member Maximum Subsidy= \$50
5	Multiply the Member Maximum Subsidy by the number of Eligible Family Members. The product of this calculation is the "Eligible Subsidy."	\$50 x 3= Eligible Subsidy = \$150
6	The Mixed Family TTP is the maximum rent minus the amount of the Eligible Subsidy.	\$500 - \$150= Mixed Family TTP= \$350
7	Subtract any applicable utility allowance (UA) from the Mixed Family TTP. The result of this calculation is the Mixed Family Tenant Rent.	UA= \$35 \$350 - \$35= Mixed Family Tenant Rent= \$315

*4. The family member who is determined not to be in an eligible immigration status following the CIS verification has moved out.*

5. *The CIS appeals process has to be completed.*
6. *Assistance is prorated in accordance with the types of preservation assistance available to mixed families*
7. *Assistance is prorated, and the family is not receiving assistance for the family member(s) whose eligible immigration status has not been verified.*
8. *A deferral of termination of assistance has been granted or*
9. *for a program participant, the informal hearing process is not complete.*

*Assistance must be denied or terminated when:*

1. *The family has not submitted the declaration of citizenship or eligible immigration status and appropriate documentation by the specified deadline or any extension;*
2. *The family has submitted the required documentation, but CIS primary and secondary verification do not verify eligible immigration status and the family does not pursue CIS appeal or informal hearing rights but the decision(s) are rendered against the family; or*
3. *The PHA determines that a family has knowingly permitted an ineligible person to live in the assisted unit on a permanent basis. In this case, the PHA must terminate assistance for the entire family for at least 24 months. This does not apply if the ineligible individual at issue was considered in calculating any proration of assistance provided for the family.*

#### ***Notification of denial due to Citizenship Status***

*When a PHA denies or terminates assistance due to a lack of citizenship or eligible immigration status, the PHA must send a written notice to the household which includes the following:*

1. *A statement that financial assistance will be denied or terminated and the justification;*
2. *Notification that the family may be eligible for prorated assistance;*
3. *In the case of a tenant, the criteria and procedures for preserving assistance*
4. *The right to appeal the results of the secondary verification to the CIS and the procedures to appeal and;*
5. *The right to request an informal hearing from the PHA in lieu of or after a CIS appeal*

*In the case of applicants, the notice must advise that the assistance may be provided until the conclusion of the CIS appeal process, however, assistance may be placed on hold until the end of the informal hearing process.*

*Over Income for Mixed families:*

*Once a mixed family has exceeded the over-income limit for 24 consecutive months,*

*the family will either have their tenancy terminated or they must pay the alternative rent as an NPHOI family. For a PHA with a termination policy for over-income families, mixed families will pay their current, prorated rent amount during the 6-month period before termination. If the mixed family is permitted to pay the alternative rent then, pursuant to 24 CFR 5.520(d)(1), the mixed family must not receive prorated assistance. Instead, the family must pay the full alternative rent amount.*

## **UTILITY ALLOWANCE**

*The PHA shall establish a utility allowance for all check-metered utilities and for all tenant-paid utilities. The allowance will be based on a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful environment. In setting the allowance, the PHA will review the actual consumption of tenant families as well as changes made or anticipated due to modernization (weatherization efforts, installation of energy-efficient appliances, etc.). Allowances will be evaluated at least annually as well as any time utility rate changes by 10% or more since the last revision to the allowances.*

*The utility allowance will be subtracted from the family's income-based rent to determine the amount of the Tenant Rent. The Tenant Rent is the amount the family owes each month to the PHA. The amount of the utility allowance is then still available to the family to pay the cost of their utilities. Any utility cost above the allowance is the responsibility of the tenant. Any savings resulting from utility costs below the amount of the allowance belongs to the tenant.*

*For PHA paid utilities, the PHA will monitor the utility consumption of each household. Any consumption in excess of the allowance established by the PHA will be billed to the tenant monthly.*

*Utility allowance revisions based on rate changes shall be effective retroactively to the first day of the month following the month in which the last rate change took place. Revisions based on changes in consumption or other reasons shall become effective at each family's next annual reexamination.*

*Families with high utility costs are encouraged to contact the PHA for an energy analysis. The analysis may identify problems with the dwelling unit that once corrected will reduce energy costs. The analysis can also assist the family in identifying ways they can reduce their costs.*

*Requests for relief from surcharges for excess consumption of PHA purchased utilities or from payment of utility supplier billings in excess of the utility allowance for tenant-paid utility costs may be granted by the PHA on reasonable grounds. Requests shall be granted to families that include an elderly member or a member with disabilities. Requests by the family shall be submitted under the Reasonable Accommodation Policy. Families shall be advised of their right to individual relief at admission to public housing and at time of utility allowance changes.*

**13.8 PAYING RENT**

Rent and other charges are due and payable on the first day of the month. All rents should be paid at insert your Westerly Housing Authority, 5 Chestnut Street, Westerly, RI 02891. Reasonable accommodations for this requirement will be made for persons with disabilities. As a safety measure, no cash shall be accepted as a rent payment.

If the rent is not paid by the **seventh (7<sup>th</sup>) business day** of the month, a Notice for non or late payment will be issued to the tenant. In addition, a **\$30.00** late charge or **\$5.00** a day, whichever is greater, will be assessed to the tenant. If rent is paid by a personal check and the check is returned for insufficient funds, this shall be considered a non-payment of rent and will incur the late charge plus an additional charge of **\$30.00** for bank charges and/or processing costs. If after three (3) consecutive non or late payments of rent, you will receive a lease violation, and three (3) lease violations can result in termination of your lease.





**5. OVER INCOME:**

*Over-Income Families (for PHAs under 250 units ONLY). If there are vacant units and there is no one on the waiting list the PHA may continue to lease to non assisted over income families whose annual income exceeds the applicable low income limit at the time of initial occupancy. (See the example below)*

**The applicable low income (80%) limits for (Harvey Co.) are:**

<b>Family Size</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
	<b>47,700</b>	<b>54,500</b>	<b>61,300</b>	<b>68,100</b>	<b>73,550</b>	<b>79,000</b>	<b>84,450</b>	<b>89,900</b>

**A family must be below the above limits in order not to be over income, if their income is above the above limits you may admit the family as long as you do the following:**

- 1. the PHA will advertise the availability of the unit for thirty (30) days in the local newspaper*
- 2. a family wanting to lease the unit may do so on a month to month basis until an eligible family applies.*
- 3. if an over-income family becomes available to fill the unit before the advertising period is up, the PHA will move the family into the unit immediately.*
- 4. A market rate rent will be charged for the unit.*
- 5. When an eligible family becomes available, the over-income family will be given thirty (30) days notice to vacate*

*To determine the income limits for any family (even in PHAs that have under 250 units, the PHA must annually determine the Over Income Limits, adopt those limits and post those limits at the PHA and at the end of this chapter. To determine the Annual income limits a PHA of any size is required to obtain them from <https://www.huduser.gov/portal/datasets/il.html>. Select the appropriate year and then click where it says click here at the bottom of the page as illustrated in the graphic on the next page.*

**For example:**

**A family of 4 wants to move in, the VLI is \$67500, the new OLI is \$162,000. You can move the family in as long as their income is below \$162,000 and they would not become over-income until their income exceeds \$162,000.**

*(You can delete these tables if you wish.)*

**INCOME LIMITS**

HUD's Office of Policy Development and Research (PD&R) is pleased to announce that Fair Market Rents and Income Limits data are now available via an application programming interface (API). With this API, developers can easily access and customize Fair Market Rents and Income Limits data for use in existing applications or to create new applications. To create an account and get an access token, please visit the API page here: <https://www.huduser.gov/portal/dataset/fmr-api.html>.

The Department of Housing and Urban Development (HUD) sets income limits that determine eligibility for assisted housing programs including the Public Housing, Section 8 project-based, Section 8 Housing Choice Voucher, Section 202 housing for the elderly, and Section 811 housing for persons with disabilities programs. HUD develops income limits based on Median Family Income estimates and Fair Market Rent area definitions for each metropolitan area, parts of some metropolitan areas, and each non-metropolitan county.

**2022** 2021 2020 2019 2018 Year ▾

Query Tool Documents Data FAQs Puerto Rico FAQs


Effective April 18, 2022

**Access Individual Income Limits Areas**

This system provides complete documentation of the development of the FY 2022 Income Limits (ILs) for any area of the country selected by the user. Official ILs, available in pdf and excel formats at this link, may differ slightly from those calculated in the documentation system, and should be used for ALL official purposes.

[Click Here for FY 2022 IL Documentation](#)

*This takes you to the page where you will select your state:*



## FY 2022 INCOME LIMITS DOCUMENTATION SYSTEM

**First select a state:**

- Alabama - AL
- Alaska - AK
- American Samoa - AS
- Arizona - AZ
- Arkansas - AR
- California - CA
- Colorado - CO
- Connecticut - CT
- Delaware - DE
- District of Columbia - DC


**Or select a FY 2022 HUD Metropolitan Fair Market Rent/Income Limits Area (HMFA):**

Abilene, TX MSA

**View HMFA Calculations**

Prepared by the Program Parameters and Research Division, HUD.

*Once you have selected your state you will then be asked to select the county your PHA is located in:*



## FY 2022 INCOME LIMITS DOCUMENTATION SYSTEM

**First select a state:**

- Alabama - AL
- Alaska - AK
- American Samoa - AS
- Arizona - AZ
- Arkansas - AR
- California - CA
- Colorado - CO
- Connecticut - CT
- Delaware - DE
- District of Columbia - DC

**Then select a county:**

- Modoc County, CA
- Mono County, CA
- Monterey County, CA
- Napa County, CA
- Nevada County, CA
- Orange County, CA
- Placer County, CA
- Plumas County, CA
- Riverdale County, CA
- Sacramento County, CA

**View County Calculations**

Click Here

*Select the VLI income limit appropriate for the family size:*

FY 2022 Income Limit Area	Median Family Income <a href="#">Click for More Detail</a>	FY 2022 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
		Very Low (50%) Income Limits (\$)	26,100	29,800	33,550	<b>37,250</b>	40,250	43,250	46,200	49,200
		<a href="#">Click for More Detail</a>								

Take the VLI income limit for the family size, multiply it by 2.4 and the result will be your NEW Over income limit.

OVER INCOME LIMITS AS OF (May 2024)

Family Size	1	2	3	4	5	6	7	8
VLI	41,250	47,150	53,050	58,900	63,650	68,350	73,050	77,750
OLI	99,000	113,160	127,320	141,360	152,760	164,040	175,320	186,600

If a family at a PHA of any size is admitted to the program as an OLI (Over Income Limit) family the maximum time they may occupy a unit is 24 months from the initial date of occupancy or reexamination. A MTW family can have their occupancy extended to 3 years but no longer unless HUD has provided the PHA with a specific waiver for those MTW families at that PHA.

The following definitions are also reflected in the Glossary section.

**Alternative non-public housing rent (alternative rent)** is the monthly amount a PHA must charge non-public housing over-income (NPHOI) families, if allowed by PHA policy to remain in a public housing unit, after they have exceeded the 24 consecutive month grace period. The alternative rent is defined at 24 CFR 960.102, as the higher of the Fair Market Rent (FMR) or per unit monthly subsidy. The monthly subsidy provided for the unit, is determined by adding the per unit assistance provided to a public housing property as calculated through the applicable formulas for the Public Housing Capital Fund and Public Housing Operating Fund. See 24 CFR 960.102 for more details about how HUD will calculate and publish such funding amounts.

**Non-public housing over-income family (NPHOI family)** is defined in 24 CFR 960.102 as a family that has exceeded the over-income limit for 24 consecutive months who remains in a public housing unit, as allowed by PHA policy, paying the alternative rent. These families are no longer public housing program participants and are unassisted tenants.

**Over-income family (OI family)** is defined in 24 CFR 960.102 as a family whose income exceeds the OI limit. This term includes families during the grace period or that are in the period before termination and are still public housing program participants. Note that in the public housing program, this term previously referred to a family that is not a low-income family (i.e., a family with an income exceeding 80 percent Area Median Income (AMI)).

**Over-income limit (OI limit)** is defined in 24 CFR 960.102. In the regulations, this amount is determined by multiplying the applicable income limit for a very low-income (VLI) family, as defined in 24 CFR 5.603(b), by a factor of 2.4 (i.e., 120 percent of the AMI).

**PHA Plan** is defined in 24 CFR 903.4(a). It is a comprehensive guide to the public housing agency's policies, programs, operations, and strategies for meeting local housing needs and

goals. There are two parts to the PHA Plan: the 5-Year Plan, which each PHA submits to HUD once every 5th PHA fiscal year, and the Annual Plan, which is submitted to HUD every year by non-qualified agencies (non-qualified agencies are PHAs that do not meet the definition of a qualified agency).

**Required notices:**

*PHA Requirements for NPHOI Families Remaining in a Public Housing Unit If permitted by PHA policy to remain in a public housing unit, an OI family that agrees to pay the alternative rent will become a non-public housing over-income (NPHOI) family. Once given the third and final OI notification as required by 24 CFR 960.507(c)(2), at the next lease renewal or in no more than 60 days after the date the final notice per 24 CFR 960.507(c)(3), whichever is sooner, the family must execute a new lease created for NPHOI families and begin to pay the alternative rent. The family will no longer be public housing program participants and will become unassisted tenants once the new lease is signed.*

*If the PHA gives a family the option to pay the alternative rent and they decline, the PHA must terminate the tenancy of the family no more than 6 months after the end of the 24 consecutive month grace period. An OI family that declines to pay the alternative rent will continue to be a public housing program participant in the period before termination. As a result, PHAs that choose to permit OI families to remain in public housing units as NPHOI families must also have a termination policy in the event the family declines to execute a new lease under 24 CFR 960.509.*

*However, the PHA may permit, in accordance with its OI policies, an OI family to execute the new lease after the deadline, but before termination of the tenancy, if the OI family pays the PHA the total difference between the alternative rent and their public housing rent dating back to the date that is the earlier of 60 days after the date the final notice per 24 CFR 960.507(c)(3) or the date that would have been the next public housing lease renewal.*

*If the PHA gives a family the option to pay the alternative rent and they accept, going forward the PHA may not conduct an annual reexamination of family income for an NPHOI family, but may offer hearing or grievance procedures at the discretion of the PHA. NPHOI families cannot participate in programs that are only for public housing or low-income families such as participation in a resident council or receive a HUD utility allowance. Lastly, PHAs are also reminded that NPHOI families are no longer subject to CSSR.*

*Once the new lease is executed, an NPHOI family may only be readmitted into the public housing program if they once again become an eligible low-income family as defined in 24 CFR 5.603(b) and reapply to the public housing program. The PHA may choose to adopt the new local preference provided at 24 CFR 960.206(b)(6) for NPHOI families. However, the adoption of this preference is at the discretion of the PHA.*

**Alternative non-public housing rent (alternative rent)**

*This notice provides additional information and guidelines for PHAs on setting alternative rents for NPHOI families that the PHA has allowed to remain in public housing. The alternative rent*

is a new definition in 24 CFR 960.102, and it is the monthly amount PHAs must charge NPHOI families after they have exceeded the 24 consecutive month grace period. The alternative rent is defined as the higher of Fair Market Rent (FMR) or per unit monthly subsidy.

The amount of the monthly subsidy provided for the unit, will be determined by adding the per unit assistance provided to a public housing property, as calculated through the applicable formulas for the Public Housing Capital Fund and Public Housing Operating Fund, for the most recent funding year. As these amounts will vary by allocation, HUD will publish the Per Unit Subsidy Report annually for all public housing developments by December 31st to help establish the alternative rents for the following calendar year. **The Per Unit Subsidy Report is attached at the end of this section and can also be found at:**

[https://www.hud.gov/public\\_indian\\_housing/programs/ph/mod/hotma\\_ph](https://www.hud.gov/public_indian_housing/programs/ph/mod/hotma_ph).

Note that the published amount for a development is not automatically the alternative rent. Instead, the PHA must determine what amount to charge as the alternative rent by comparing the per unit subsidy amount for the development where an NPHOI family resides to the applicable FMR14 for a unit of the same bedroom size in the area. Whichever amount is higher will be the alternative rent applied to the family's new NPHOI lease.

PHAs must update the information in IMS/PIC, and/or HIP (IMS/PIC's successor system) in a timely manner, to ensure that no unit that houses an NPHOI family receives public housing subsidy. Further, PHAs should be aware that since no public housing subsidy may support units occupied by NPHOI families, any delay may result in the PHA owing HUD any improperly calculated subsidy amounts. For more information on properly reporting NPHOI families in IMS/PIC, please see Notice PIH-2021-35 or its successor notice.

### **NPHOI Lease**

In response to the public comments solicited by the 2020 FR Notice, new regulations have been added at 24 CFR 960.509 regarding the minimum lease requirements for NPHOI families. **A copy of the Sample Lease is included in this chapter** A PHA may add additional terms to the lease for NPHOI families, so long as it is consistent with after the initial OI determination is made, the PHA must conduct an income reexamination 12 months later to determine if the family remains over-income even if the family is paying the flat rent (24 CFR 960.253) and/or the date no longer coincides with the family's original annual reexamination date. An income reexamination to determine if a family remains over-income does not reset the family's normal annual reexamination date. For example:

If a PHA discovers through an annual or interim income reexamination during the 24-month grace period that a previously over-income family is now below the over-income limit, the family is no longer over-income. In this case, a previously OI family would be entitled to a new 24 consecutive month grace period if the family's income once again exceeds the OI limit.

For example:

Initial Year 2023	2 <sup>nd</sup> Year 2024	3 <sup>rd</sup> Year 2025	4 <sup>th</sup> Year 2026
FI \$163,000	\$80,00	\$85,000	\$179,000
OLI \$162,400	\$172,000	\$175,000	\$178,00

(FILL THE CHART IN AS THE CLIENT'S INCOME CHANGES EACH YEAR)

As you can see from the Chart illustrated above, the tenant family is over income in 2023 which means you would send them the notification letter, but their income in 2024 drops so the time period would stop for 2024 and 2025, but would start again in 2026. You will need to chart the income for each over income limit tenant at your property(ies).

**Scenario #1 – Uninterrupted grace period**

*For example, if a family is determined to be over-income at an interim reexamination, the 24 consecutive month grace period begins. The 24-month 'clock' continues to run if the family remains over-income as determined by another reexamination 12 months later. At the end of the 24<sup>th</sup> month of the grace period, if the family remains over-income the family will be subject to the over-income policy of the PHA (i.e., termination within 6 months or beginning to pay the alternative rent).*

**Scenario #2 – Interrupted grace period**

*If the family is determined to no longer be OI at any point within the 24-month period, the grace period no longer applies. The family remains an income-eligible public housing program participant. If the family is determined to be OI again in the future, they would be entitled to a new 24 consecutive month grace period. PHAs must ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other disabilities. For persons with vision impairments, upon request and free of charge, this may include brailled materials, large print, or materials on tape. For persons with hearing impairments, upon request and free of charge, this may include sign language or other types of interpretation, appropriate auxiliary aids, and services, such as interpreters, transcription services, and accessible electronic communications, in accordance with Section 504 and ADA requirements (24 CFR 8.6 and 24 CFR 8.28; 28 CFR part 35, Subpart E).*

**c. Limitation on public housing tenancy**

*Once a family exceeds the over-income limit for 24 consecutive months, the public housing agency must either:*

*i. Charge such family as monthly rent for the unit occupied by such family an amount equal to the greater of—*

- (1) the applicable fair market rent (FMR) for a dwelling unit in the same market area of the same size; or*
- (2) the amount of the monthly subsidy which shall include any amounts from the Operating Fund and Capital Fund under section 9 used for the unit.*

*Additional details for the above-mentioned process are discussed below.*

#### ***d. End of the grace period and Status of an Over-Income Family***

*This section describes the actions a PHA must take at the end of the grace period for over income families. PHAs must ensure that OI families receive a grace period of 24 consecutive months before any adverse action is taken because of the family being over-income. A PHA can find these requirements in the regulations at 24 CFR 960.507 and 960.509.*

*Once a public housing family is determined to be over-income pursuant to an annual reexamination or an interim reexamination, the 24 consecutive month grace period begins. At all times prior to the end of 24 consecutive months, the family will continue to be public housing program participants. The change in OI family status will vary based on the over-income policy selected by the PHA.*

#### ***PHA policy terminating the tenancy of Over-Income Families***

*In the case of a PHA with a policy to terminate OI families, these families continue to be public housing program participants in the period before termination. It should be noted that while a PHA may choose to adopt a policy to terminate the tenancy of an OI family after the 24 consecutive month grace period, termination of tenancy is not equivalent to a judicial eviction. A judicial eviction typically occurs when a tenant fails to vacate the unit after their tenancy has been terminated, resulting in the need for judicial action initiated by the PHA to evict the tenant. HUD expects that once an OI family receives proper notice of termination, many will leave voluntarily without necessitating court action. PHAs should note that the period before termination can be up to six months but could be less, as defined in the PHA policy.*

*In the period before termination, the OI family will continue to pay the rent type of their choice (i.e., income-based, flat rent, or prorated rent for mixed families). Additionally, the OI family is still a public housing program participant prior to termination, so the OI family must continue to abide by all program requirements including the Community Service Activities or Self-Sufficiency Work Activities requirements (CSSR). Lastly, when an OI family is facing termination after exceeding the grace period, the family may request an interim reexamination, but a decrease in income and the family's rent will not reset the period before termination or enable the family to avoid termination.*

#### ***PHA Requirements for NPHOI Families Remaining in a Public Housing Unit***

*If permitted by PHA policy to remain in a public housing unit, an OI family that agrees to pay the alternative rent will become a non-public housing over-income (NPHOI) family. Once given the third and final OI notification as required by 24 CFR 960.507(c)(2), at the next lease renewal or in no more than 60 days after the date the final notice per 24 CFR 960.507(c)(3), whichever is sooner, the family must execute a new lease created for NPHOI families and begin to pay the alternative rent. The family will no longer be public housing program participants and will become unassisted tenants once the new lease is signed.*

*If the PHA gives a family the option to pay the alternative rent and they decline, the PHA must*



*terminate the tenancy of the family no more than 6 months after the end of the 24 consecutive month grace period. An OI family that declines to pay the alternative rent will continue to be a public housing program participant in the period before termination. As a result, PHAs that choose to permit OI families to remain in public housing units as NPHOI families must also have a termination policy in the event the family declines to execute a new lease under 24 CFR 960.509.*

*However, the PHA may permit, in accordance with its OI policies, an OI family to execute the new lease after the deadline, but before termination of the tenancy, if the OI family pays the PHA the total difference between the alternative rent and their public housing rent dating back to the date that is the earlier of 60 days after the date the final notice per 24 CFR 960.507(c)(3) or the date that would have been the next public housing lease renewal.*

*If the PHA gives a family the option to pay the alternative rent and they accept, going forward the PHA may not conduct an annual reexamination of family income for an NPHOI family, but may offer hearing or grievance procedures at the discretion of the PHA. NPHOI families cannot participate in programs that are only for public housing or low-income families such as participation in a resident council, or receive a HUD utility allowance.<sup>12</sup> Lastly, PHAs are also reminded that NPHOI families are no longer subject to CSSR.*

*Once the new lease is executed, an NPHOI family may only be readmitted into the public housing program if they once again become an eligible low-income family as defined in 24 CFR 5.603(b) and reapply to the public housing program. The PHA may choose to adopt the new local preference proved at 24 CFR 960.206(b)(6) for NPHOI families. However, the adoption of this preference is at the discretion of the PHA.*

#### ***e. Reporting Requirements***

*In addition to the new requirements for over-income families, 24 CFR 960.507(f) requires PHAs to report on two new data points annually: the total number of OI families residing in public housing and the total number of families on waiting lists for admission to the public housing projects of the agency as of end of the year. The regulation uses the term 'as of the end of the year', and this notice makes clear that the 'end of the year' in this case will mean the end of the calendar year or December 31<sup>st</sup>. Per the regulations, this information must also be made publicly available.*

*To minimize the additional reporting burden, HUD has taken the following steps:*

#### ***Data on the number of OI families residing in public housing.***

*The number of families residing in public housing with incomes exceeding the over-income limitation will include the number of families in the 24 consecutive month grace period, those that are in the period before termination, and those that are NPHOI families paying the alternative rent. PHAs will report on the number of OI families residing in public housing through income data already provided by form HUD-50058, under OMB approval number 2577-0083, and through unit data in the Inventory Management System/PIH Information Center (IMS/PIC) and/or its successor system: the Housing Information Portal (HIP). Therefore, this*

report will require no additional action on the part of PHAs. HUD will pull a report of this data as of December 31<sup>st</sup> each year and make it publicly available.

***Data on the number of families on waiting lists for admission to public housing projects***

*The additional burden to submit waitlist data is a new requirement for all PHAs with a public housing program and the reporting period of this requirement will begin January 1, 2024. This is the earliest date PHAs can submit waiting list data to HUD. This data must be submitted via a new electronic data collection tool that has been developed in the Operating Fund Web portal. As this is an existing HUD system that PHAs are already familiar with and comfortable working in, it is expected that the additional burden will be minimal.*

*A PHA that maintains both an agency-wide and site-based wait lists, should be mindful not to duplicate households when reporting on the total number of families on the waiting list. All information provided, such as the number of households and the status of the waiting list (open or closed), should be current as of December 31<sup>st</sup> of the previous calendar year. The data may be provided by any authorized PHA official but will require the electronic signature of the Executive Director.*

*HUD will make this new reporting module available beginning on January 1<sup>st</sup> and all submissions will be due by March 31<sup>st</sup> of each year. A user guide and training video for the Public Housing Waiting List Data Collection Tool will be provided on the Operating Fund Web Portal. HUD will combine this data with the data provided in IMS/PIC and/or HIP and the HUD-50058 form and publish the Public Housing Over-Income Families and Waiting-Lists Report annually on the HUD website by April 30<sup>th</sup> of each calendar year at:*

*[https://www.hud.gov/public\\_indian\\_housing/programs/ph/mod/hotma\\_ph](https://www.hud.gov/public_indian_housing/programs/ph/mod/hotma_ph).*

***8. Determination of the Alternative Rent and the new lease for NPHOI families***

***Alternative non-public housing rent (alternative rent)***

*The alternative rent is a new definition in 24 CFR 960.102, and it is the monthly amount PHAs must charge NPHOI families after they have exceeded the 24 consecutive month grace period. The alternative rent is defined as the higher of Fair Market Rent (FMR) or per unit monthly subsidy.*

*The amount of the monthly subsidy provided for the unit, will be determined by adding the per unit assistance provided to a public housing property, as calculated through the applicable formulas for the Public Housing Capital Fund and Public Housing Operating Fund, for the most recent funding year. As these amounts will vary by allocation, HUD will publish the Per Unit Subsidy Report annually for all public housing developments by December 31<sup>st</sup> to help establish the alternative rents for the following calendar year and can be found at:*

*[https://www.hud.gov/public\\_indian\\_housing/programs/ph/mod/hotma\\_ph](https://www.hud.gov/public_indian_housing/programs/ph/mod/hotma_ph).*

A copy of the 2023 Report is attached to this Chapter.

*Note that the published amount for a development is not automatically the alternative rent. Instead, the PHA must determine what amount to charge as the alternative rent by comparing the per unit subsidy amount for the development where an NPHOI family resides to the applicable FMR for a unit of the same bedroom size in the area. Whichever amount is higher will be the alternative rent applied to the family's new NPHOI lease.*

*PHAs must update the information in IMS/PIC, and/or HIP (IMS/PIC's successor system) in a timely manner, to ensure that no unit that houses an NPHOI family receives public housing subsidy. Further, PHAs should be aware that since no public housing subsidy may support units occupied by NPHOI families, any delay may result in the PHA owing HUD any improperly calculated subsidy amounts. For more information on properly reporting NPHOI families in IMS/PIC, please see Notice PIH-2021-35 or its successor notice.*

### ***NPHOI Lease***

*In response to the public comments solicited by the 2020 FR Notice, new regulations have been added at 24 CFR 960.509 regarding the minimum lease requirements for NPHOI families. A PHA may add additional terms to the lease for NPHOI families, so long as it is consistent with HPHAs are required to make their leases flexible enough to easily adjust rent as the FMR changes and as HUD publishes the per unit subsidy calculations. For PHAs with an over-income termination policy, in the period before termination, the OI family will remain on the public housing lease. Should an OI family decline to execute the new NPHOI lease, the regulation at 24 CFR 966.4(a)(2)(iii) has been revised so that the public housing lease will become month-to-month for OI families in the period before termination and the PHA must continue to charge these families their current rent (i.e., the family's choice of income-based, flat rent, or prorated rent for mixed families).*

*In accordance with 24 CFR 960.507, and as stated in section 7 of this notice, the NPHOI family must execute a new lease and begin to pay the alternative rent. This lease must include the minimal provisions proved in 24 CFR 960.509. Examples of these provisions include:*

***Lease term and renewal*** - *The lease must have a term as determined by the PHA and included in PHA policy. Unlike the public housing lease, a 12-month lease term is not required. PHA's may choose to offer NPHOI families leases on a month-to-month basis.*

***Security deposits*** - *The lease must provide that any previously paid security deposit will be applied to the tenancy upon signing a new lease.*

***No automatic lease renewal*** - *Upon expiration of the lease term, the lease shall not automatically renew.*

***Grievance procedures*** - *The lease may include hearing or grievance procedures and may explain when the procedures are available to the family. However, it should be noted that hearing or grievance procedures for NPHOI families are at the discretion of the PHA.*

***A Sample NPHOI Lease is attached at the end of this Chapter.***

**9. Unit Tenant Status Category and Sub-Category**

*The IMS/PIC Development Submodule categorizes units by Unit Tenant Status Categories and Sub-Categories. Per Notice PIH 2021-35, PHAs must ensure that a unit meets the substantive requirements of a Unit Tenant Status Sub-Category for the entire period that it is in that Sub-Category in IMS/PIC. Each Sub-Category corresponds to one of four Categories: Occupied, Vacant, Vacant HUD Approved, and Non-Dwelling.*

*At this time, PHAs will categorize units occupied by NPHOI families as 'Non-Assisted Tenant Over Income' in IMS/PIC. However, a new sub-category will be created in HIP. When this system is ready, PHAs will categorize units occupied by NPHOI families as 'Non-Public Housing Over-Income (NPHOI) Tenant's.*

**ALTERNATIVE RENTS FOR NHOLI TENANT FAMILIES:**

In determining the Alternative Rents for NHOLI families you must use the **HIGHER of the Fair Market Rent for the family or the Alternative rent as established in the table attached to this document.**

(To obtain the Alternative rents go to the table attached to this page, highlight and copy the Alternative rents for your PHA and Insert here. The Alternative Rents for Westerly Housing Authority are:

PHA CODE	Insert your PHA name and county	2022 UNITS	2022 CFP PUM MINUS DTF	2021 OP FUND PER UNIT FUNDING	2022 PER UNIT SUBSIDY
RI008	Westerly Housing Authority	123	215.51	249.00	464.51

Also post the appropriate FMRs for your jurisdiction below for easy comparison. The FMRs can be located at:

[https://www.huduser.gov/portal/datasets/fmr/fmrs/fy2023\\_code/select\\_Geography.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/fy2023_code/select_Geography.odn) INSERT YOUR INCOME LIMITS AND RENTS IN THE TABLES BELOW

**Final FY 2025 & Final FY 2024 FMRs By Unit Bedrooms**

Year	Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom
FY 2025 FMR	\$1,284	\$1,292	\$1,576	\$1,970	\$2,459
FY 2024 FMR	\$1,332	\$1,340	\$1,610	\$2,059	\$2,732

The Alternative rent is **the higher of the 2022 Per Unit subsidy of \$316.27 or the Fair Market Rent for the family size which are shown above.**



**6. Instructions:**

Use these sample notices if you will be allowing Tenants to continue to occupy their unit as a NPHOI tenant.





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# OVER-INCOME FAMILY INITIAL NOTIFICATION

---

*[name of PHA]*

Resident name:

Address:

Date:

## **Purpose**

The purpose of this notice is to inform you that \_\_\_\_\_ *[name of PHA]* has determined that your family's income is above the income limit (over-income) according to federal rules for the public housing program. This is your initial (first) notice.

## **What happens next?**

For now, your rent will continue to be calculated as usual, you will continue to be offered a choice between income-based and flat rent, and you do not have to move. If your family remains over-income for the following 24 consecutive months, you will no longer be eligible for assistance under the public housing program but may remain in a public housing unit paying an alternative non-public housing rent calculated under federal rules for non-public housing tenants.

If you think that we have made a mistake and your family should not be considered over-income, you may request a hearing by calling: XXX-XXX-XXXX or emailing *[address]* or requesting more information from PHA staff at: *[location]*. If you wish to request a hearing, please do so as soon as possible. If you do not wish to request a hearing, you do not need to do anything at this time.

**What about changes to my income?**

We will continue to reexamine your income every 12 months as usual. After each reexamination, you will receive a notification like this one if your family is still over-income.

If your family's income drops below the over-income limit before the end of the 24 consecutive-month grace period, you will no longer be considered over-income. If your family's income increases again to an amount that is over-income, you will receive another 24 consecutive month grace period.

If your income changes, contact us using the information provided below to learn the policy for requesting an interim reexamination.

*[PHA: Please note that the following section is optional. The regulations only require this level of detail for the second notice.]*

**What if my family remains over-income in 24 consecutive months?**

According to the Continued Occupancy Policy, your family may continue to reside in a public housing unit even if you remain over-income after 24 months. However, your unit will no longer receive assistance from the federal public housing program so your rent will be calculated differently.

If you choose to stay in your unit after remaining over-income for 24 consecutive months, you will:

- Pay an “alternative non-public housing rent” (currently estimated at \$\_\_\_\_\_)
  - > The alternative rent is adjusted annually and subject to change.
  - > You will receive a notification with more details on what to expect next if you decide to remain in a public housing unit after 24 consecutive months of being over-income.
- Need to sign a new lease for Non-Public Housing Over-Income (NPHOI) families.
  - > The NPHOI lease will need to be signed no later than 60 days after receiving notification of the end of the 24-month grace period or at the next lease renewal, whichever is sooner.

*[INSERT PHA CONTACT INFORMATION]*



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# OVER-INCOME FAMILY 12 MONTH NOTIFICATION

---

*[name of PHA]*

Resident name:

Address:

Date:

## **Purpose**

The purpose of this notice is to inform you that \_\_\_\_\_ *[name of PHA]* has determined that your family's income is above the income limit (over-income) according to federal rules for public housing. This is your 12-month (second) notice.

## **What happens next?**

For now, your rent will continue to be calculated as usual, you will continue to be offered a choice between income-based and flat rent, and you do not have to move. If your family remains over-income for the following 12 consecutive months, you will no longer be eligible for assistance under the public housing program but may remain in a public housing unit paying an alternative non-public housing rent calculated under federal rules for non-public housing tenants.

If you think that we have made a mistake and your family should not be considered over-income, you may request a hearing by calling: XXX-XXX-XXXX or emailing *[address]* or requesting more information from PHA staff at: *[location]*. If you wish to request a hearing, please do so as soon as possible. If you do not wish to request a hearing, you do not need to do anything at this time.

### **What about changes to my income?**

We will need to re-examine your income in 12 months. After the reexamination, you will receive a notification like this one if your family is still over-income.

If your family's income drops below the over-income limit before the end of the 24 consecutive-month grace period, you will no longer be considered over-income. If your family's income increases again to an amount that is over-income, you will receive another 24 consecutive month grace period.

If your income changes, contact us using the information provided below to learn the policy for requesting an interim reexamination.

### **What if my family remains over-income in consecutive 12 months?**

According to the Continued Occupancy Policy, your family may continue your tenancy even if you remain over-income for another 12 months (24 consecutive months total). However, your unit will no longer receive assistance from the federal public housing program so your rent will be calculated differently.

If you choose to remain in a public housing unit after the 24 month grace period, you will:

- No longer be a public housing program participant and will therefore not be eligible to participate in the resident council or programs specifically for public housing residents.
- Pay an "alternative non-public housing rent" (currently estimated at \$\_\_\_\_\_)
- Need to sign a new lease

*[INSERT PHA CONTACT INFORMATION]*





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# OVER-INCOME FAMILY 24 MONTH NOTIFICATION

---

*[name of PHA]*

Resident name:

Address:

Date:

## **Purpose**

The purpose of this notice is to inform you that \_\_\_\_\_ *[name of PHA]* has determined that your family's income is above the income limit (over-income) according to federal rules for public housing. This is your 24-month (third) notice.

You are no longer eligible for assistance under the public housing program. However, you do not have to move – see below for details.

## **What if I disagree that my family is over-income?**

If you think that we have made a mistake and your family should not be considered over-income, you may request a hearing by calling: XXX-XXX-XXXX or emailing *[address]* or requesting more information from PHA staff at: *[location]*. If you wish to request a hearing, please do so as soon as possible.

## **What about changes to my income?**

Changes to your income after you receive this notice will not change our determination. Because your family has been over-income for 24 months, you are no longer eligible for assistance under the public housing program.

**What do I need to do now?**

According to the Continued Occupancy Policy, your family may continue your tenancy. However, because you will not receive assistance from the federal public housing program, your rent will be calculated differently.

If you choose to remain in a public housing unit, you will:

- Pay an “alternative non-public housing rent” (currently \$\_\_\_\_)
- Need to sign a new lease within 60 days or at your next lease renewal (whichever is sooner)

If the lease is not signed within this time period, the PHA must terminate your tenancy by \_\_\_\_ *[no more than 6 months after this notification]*. However, per policy, \_\_\_\_ *[name of PHA]* may permit an over-income family to execute the lease after this period (up to 60 days), but before termination of the tenancy. In this case, the family must pay the total difference between the alternative non-public housing rent and your public housing rent dating back to the date when you were required to execute the lease.

If you choose to leave your unit, please inform us as soon as possible according to your existing lease.

To inform the PHA if you do not plan to remain in a public housing unit: *[Use this space to detail when and how and family can inform the PHA if they decline to stay in the unit.]*

*[INSERT PHA CONTACT INFORMATION]*



6. Instructions:

Use these sample notices if you will be requiring tenants to terminate occupancy after the end of all 24 months periods.



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# OVER-INCOME FAMILY INITIAL NOTIFICATION

---

*[name of PHA]*

Resident name:

Address:

Date:

## **Purpose**

The purpose of this notice is to inform you that \_\_\_\_\_ *[name of PHA]* has determined that your family's income is above the income limit (over-income) according to federal rules for the public housing program. This is your initial (first) notice.

## **What happens next?**

For now, your rent will continue to be calculated as usual, you will continue to be offered a choice between income-based and flat rent, and you do not have to move. If your family remains over-income for the following 24 consecutive months, you will no longer be eligible for assistance under the public housing program.

If you think that we have made a mistake and your family should not be considered over-income, you may request a hearing by calling: XXX-XXX-XXXX or emailing *[address]* or requesting more information from PHA staff at: *[location]*. If you wish to request a hearing, please do so as soon as possible. If you do not wish to request a hearing, you do not need to do anything at this time.



**What about changes to my income?**

We will continue to reexamine your income every 12 months as usual. After each reexamination, you will receive a notification like this one if your family is still over-income.

If your family's income drops below the over-income limit before the end of the 24 consecutive-month grace period, you will no longer be considered over-income. If your family's income increases again to an amount that is over-income, you will receive another 24 consecutive month grace period.

If your income changes, contact us using the information provided below to learn the policy for requesting an interim reexamination.

*[PHA: Please note that the following section is optional. The regulations only require this level of detail for the second notice.]*

**What if my family remains over-income for 24 consecutive months?**

Within 30 days of the recertification, you will receive a notice like this one informing you that your family has remained over-income for 24 consecutive months. According to the Continued Occupancy Policy, families that remain over-income for 24 consecutive months must leave their units and find other housing in no more than \_\_\_\_ *[up to 6 depending on PHA policy]* months after receiving notification.

If your family continues to reside in the unit after \_\_\_\_ *[restate date]*, the PHA will begin eviction proceedings by issuing a notice to vacate.

Until the time of lease termination, you will continue to be a public housing program participant and will continue to be charged your choice of income-based or flat rent.

*[INSERT PHA CONTACT INFORMATION]*



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# OVER-INCOME FAMILY 12 MONTH NOTIFICATION

---

*[name of PHA]*

Resident name:

Address:

Date:

## **Purpose**

The purpose of this notice is to inform you that \_\_\_\_\_ *[name of PHA]* has determined that your family's income is above the income limit (over-income) according to federal rules for public housing. This is your 12-month (second) notice.

## **What happens next?**

For now, your rent will continue to be calculated as usual, you will continue to be offered a choice between income-based and flat rent, and you do not have to move. If your family remains over-income for the following 12 consecutive months, you will no longer be eligible for assistance under the public housing program.

If you think that we have made a mistake and your family should not be considered over-income, you may request a hearing by calling: XXX-XXX-XXXX or emailing *[address]* or requesting more information from PHA staff at: *[location]*. If you wish to request a hearing, please do so as soon as possible. If you do not wish to request a hearing, you do not need to do anything at this time.

**What about changes to my income?**

We will need to re-examine your income in 12 months. After the reexamination, you will receive a notification like this one if your family is still over-income.

If your family's income drops below the over-income limit before the end of the 24 consecutive-month grace period, you will no longer be considered over-income. If your family's income increases again to an amount that is over-income, you will receive another 24 consecutive month grace period.

If your income changes, contact us using the information provided below to learn the policy for requesting an interim reexamination.

**What if my family remains over-income in consecutive 12 months?**

Within 30 days of the recertification, you will receive a notice like this one informing you that your family has remained over-income for 24 consecutive months. According to the Continued Occupancy Policy, families that remain over-income for 24 consecutive months must leave their units and find other housing in no more than \_\_\_ *[up to 6 depending on PHA policy]* months after receiving notification.

If your family continues to reside in the unit after \_\_\_ *[restate date]*, \_\_\_ *[name of PHA]* will begin eviction proceedings by issuing a notice to vacate.

Until the time of lease termination, you will continue to be a public housing program participant and will continue to be charged your choice of income-based or flat rent.

*[INSERT PHA CONTACT INFORMATION]*



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creating its own notices. Example: [This text is meant as instruction to the PHA.]***

# OVER-INCOME FAMILY 24 MONTH NOTIFICATION

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*[name of PHA]*

Resident name:

Address:

Date:

## **Purpose**

The purpose of this notice is to inform you that \_\_\_\_\_ *[name of PHA]* has determined that your family's income is above the income limit (over-income) according to federal rules for public housing. This is your 24-month (third) notice.

You are no longer eligible for assistance under the public housing program.

## **What if I disagree that my family is over-income?**

If you think that we have made a mistake and your family should not be considered over-income, you may request a hearing by calling: XXX-XXX-XXXX or emailing *[address]* or requesting more information from PHA staff at: *[location]*. If you wish to request a hearing, please do so as soon as possible.

## **What about changes to my income?**

Changes to your income after you receive this notice will not change our determination. If necessary, you may request an interim reexamination, but a decrease in income or rent will not make you eligible to remain. Because your family has been over-income for 24 consecutive months, you are no longer eligible for assistance under the public housing program.



**What do I need to do now?**

According to the Continued Occupancy Policy, your family cannot continue your tenancy. You must find other housing as soon as possible. Our policy is to allow families up to \_\_\_\_ *[up to 6 depending on PHA policy]* months to find other housing.

If your family continues to reside in the unit after \_\_\_\_ *[restate date]*, the PHA will begin eviction proceedings by issuing a notice to vacate.

Until the time of lease termination, you will continue to be a public housing program participant and will continue to be charged your choice of income-based or flat rent.

*[The following is an optional section where the PHA may include referral services to support a family in finding new housing.]*

The following services are available to assist you:

*[INSERT PHA CONTACT INFORMATION]*



Instructions and disclaimers.

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***Per § 960.509 the non-public housing over-income lease must contain at a minimum the following provisions. Anything included in brackets and italic is meant as instruction to the PHA in creating its own lease. Example: [This text is meant as instruction to the PHA.]***

**You can delete this page as it is for instructions only.**

## 7. Non-Public Housing Over-Income Sample Lease

### Section 1: Parties, dwelling unit, and term.

1. Name of PHA and tenants: THIS AGREEMENT is executed between the Westerly Housing Authority (herein called "PHA"), and John Smith (herein called the "Tenant"), and becomes effective as of this date:  
\_\_\_\_\_.
2. The PHA leases to the tenant, upon Terms and Conditions set forth in Part I of this Lease agreement) the dwelling unit LOCATED at \_\_\_\_\_ [ *address, apartment number, and any other information needed to identify the dwelling unit*] (called "premises" or "dwelling unit") to be occupied exclusively as a private residence by Tenant and household.
3. The term of the lease is: \_\_\_\_\_.
4. (A) PHA-supplied utilities, services, and equipment. If indicated by an (X) below, PHA provides the indicated utility as part of the rent for the premises without additional cost:  
  
( ) Electricity ( ) Natural Gas ( ) Heating Fuel ( ) Water ( ) Sewerage ( ) Other  
  
If indicated by an (X) below, PHA shall provide the following appliances for the premises: ( ) Cooking Range ( ) Refrigerator  
  
(B) Tenant-supplied utilities and appliances. If indicated by an (X) below, tenant must pay for the indicated utility:  
  
( ) Electricity ( ) Natural Gas ( ) Heating Fuel ( ) Water ( ) Sewerage ( ) Other  
  
If indicated by an (X) below, tenant shall provide the following appliances for the premises: ( ) Cooking Range ( ) Refrigerator
5. *Household Composition*: The Tenant's household is composed of the individuals listed below. These individuals have been approved by the PHA and may include (family members, foster children and adults, and any PHA-approved live-in aides)

6.

The family must promptly inform the PHA of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.

Other than the Head or Spouse each household member should be listed by age, oldest to youngest. All members of the household over age 18 shall execute the lease.

Name	Relationship	Age & Birthdate	Social Security Number
1.	Head	— & _/ _/ _	
2.			
3.			
4.			
5.			
6.			
7.			
8.			

**Section 2: Lease term and renewal.**

**1. Lease term and renewal: per PHA policy**

2. At any time, the PHA may terminate the tenancy in accordance with Section 11.

**Section 3: Payments due under the lease.**

1. **Tenant rent.** Rent in the amount of \$ \_\_\_\_ per month shall be payable in advance on the first day of each month and shall be delinquent after the fifth (5th) day of said month. *This rent is based on an amount determined by the PHA in accordance with § 960.507(e)(1). The PHA must comply with State or local law in giving the tenant written notice stating any change in the amount of tenant rent. HUD will publish the Per Unit Subsidy Report annually for all public housing developments by December 31st to help establish the alternative rents for the following calendar year.*
2. **PHA charges.** The tenant is responsible for repair charges beyond normal wear and tear and for consumption of excess utilities. Such charges will be determined by:

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\_\_\_\_\_ *[state the basis for the determination of such charges, e.g., by a posted schedule of charges for repair, amounts charged for excess utility consumption, etc. Note that the imposition of charges for consumption of excess utilities is permissible only if such charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances.]*

3. **Late payment penalties.** *[Include any penalties for late payment of rent.]*
4. **When charges are due.** Charges assessed under paragraphs (2) and (3) of this section are due in accordance with PHA policy: *[Include PHA policy.]*
5. **Security deposits.** The tenant previously paid a security deposit of \$ \_\_\_\_\_. This amount will be applied to the tenancy upon signing this lease. Return of the security deposit will be made provided: *[include circumstances under which a security deposit will be returned to the tenant consistent with State and local security deposit laws.]* Tenant will be charged for damage to the unit and this amount may be deducted from the security deposit if: *[include circumstances under which a security deposit will not be fully returned to the tenant consistent with State and local security deposit laws.]*

**Section 4: Tenant's right to use and occupancy.** The tenant has the right to exclusive use and occupancy of the leased unit by the members of the household

authorized to reside in the unit in accordance with the lease, as well as their guests (as defined in 24 CFR 5.100).

**Section 5: The PHA's obligations.** The PHA's obligations under the lease include the following:

1. To maintain the dwelling unit and the project in decent, safe, and sanitary condition.
2. To comply with requirements of applicable State and local building codes, housing codes, and HUD regulations materially affecting health and safety.
3. To make necessary repairs to the dwelling unit.
4. To keep project buildings, facilities, and common areas, not otherwise assigned to the tenant for maintenance and upkeep, in a clean and safe condition.
5. To maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities, and appliances, including elevators, supplied, or required to be supplied by the PHA.
6. To provide and maintain appropriate receptacles and facilities (except containers for the exclusive use of an individual tenant family) for the deposit of ashes, garbage, rubbish, and other waste removed from the dwelling unit by the tenant in accordance with paragraph (b)(6)(vii) of this section.
7. To supply running water, including an adequate source of potable water, and reasonable amounts of hot water and reasonable amounts of heat at appropriate times of the year (according to local custom and usage), except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or where heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct utility connection.
8. To notify the tenant of the specific grounds for any proposed adverse action by the PHA as required by State and local law.
9. To comply with Federal, State, and local nondiscrimination and fair housing requirements, including Federal accessibility requirements and providing reasonable accommodations for persons with disabilities.

10. To establish necessary and reasonable policies for the benefit and well-being of the housing project and the tenants, post the policies in the project office, and incorporate the regulations by reference in the lease.

***Section 6: The Tenant's obligations. [The lease must, at a minimum and consistent with State and local law, provide that the tenant must:]***

1. Not assign the lease or sublease the dwelling unit.
2. Not provide accommodations for boarders or lodgers.
3. Use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not use or permit its use for any other purpose.
4. Abide by necessary and reasonable policies established by the PHA for the benefit and well-being of the housing project and the tenants, which must be posted in the project office and incorporated by reference in the lease.
5. Comply with all applicable State and local building and housing codes materially affecting health and safety.
6. Keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition.
7. Dispose of all waste from the dwelling unit in a sanitary and safe manner.
8. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities, including elevators.
9. Refrain from and cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or housing project.
10. Pay reasonable charges (other than for wear and tear) for the repair of damages to the dwelling unit, or to the housing project (including damages to buildings, facilities, or common areas) caused by the tenant, a member of the household or a guest.
11. Act, and cause household members and guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe, and sanitary condition.



12. Assure that no tenant, member of the tenant's household, guest, or any other person under the tenant's control engages in:

**(A) Criminal activity.**

(1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.

(2) Any drug-related criminal activity on or off the premises; or

**(B) Civil activity.** For non-public housing over-income units that are not within mixed-finance projects, any smoking of prohibited tobacco products in the tenant's unit as well as restricted areas, as defined by 24 CFR 965.653(a), or in other outdoor areas that the PHA has designated as smoke-free.

13. To assure that no member of the household engages in an abuse or pattern of abuse of alcohol that affects the health, safety, or right to peaceful enjoyment of the premises by other residents.

**Section 7: Tenant maintenance.** *[The lease may provide that:]* The tenant must perform seasonal maintenance or other maintenance tasks, including: *[Tasks may be included where performance of such tasks by tenants of dwellings units of a similar design and construction is customary, as long as such provisions are not for the purpose of evading the obligations of the PHA. In cases where a PHA adopts such lease provisions, the PHA must exempt tenants who are unable to perform such tasks because of age or disability.]*

**Section 8: Defects hazardous to life, health, or safety.** The following are the rights and obligations of the tenant and the PHA if the premise is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants.

1. The tenant must immediately notify project management of the damage.
2. The PHA must repair the unit within a reasonable time. The PHA must charge the tenant the reasonable cost of the repairs if the damage was caused by the tenant, the tenant's household, or the tenant's guests.
3. The PHA must offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time, subject to § 960.509(b)(5)(ix); and

4. Abatement of rent in proportion to the seriousness of the damage and loss in value as a dwelling if repairs are not made in accordance with paragraph (2) of this section or alternative accommodations not provided in accordance with paragraph (3) of this section must be provided by the PHA, except that no abatement of rent may occur if the tenant rejects the alternative accommodation or if the damage was caused by the tenant, tenant's household or guests.

***Section 9: Entry of dwelling unit during tenancy.*** The PHA may enter the dwelling unit during the tenant's possession under the circumstances outlined in this section.

1. The PHA is, upon reasonable advance notification to the tenant, permitted to enter the dwelling unit during reasonable hours for the purpose of performing routine inspections and maintenance, for making improvement or repairs, or to show the dwelling unit for re-leasing. A written statement specifying the purpose of the PHA entry delivered to the dwelling unit at least two days before such entry is reasonable advance notification.
2. The PHA may enter the dwelling unit at any time without advance notification when there is reasonable cause to believe that an emergency exists; and
3. If the tenant and all adult members of the household are absent from the dwelling unit at the time of entry, the PHA must leave in the dwelling unit a written statement specifying the date, time, and purpose of entry prior to leaving the dwelling unit.

***Section 10: Notice procedures.*** In accordance with State and local laws, the PHA and tenant must follow these procedures when giving notices:

1. Except as provided in paragraph (9) of this section, notice to a tenant must be provided in a form to allow meaningful access for persons who are limited English proficient and, in a form, to ensure effective communication with individuals with disabilities; and
2. Notice to the PHA can be in writing, hand delivered or sent by prepaid first-class mail to PHA address provided in the lease, orally, or submitted electronically through a communications system established by the PHA for that purpose.

***Section 11: Termination of tenancy and eviction.***

1. **Procedures.** These procedures must be followed by the PHA and the tenant to terminate the tenancy: *[Insert procedure compliant with State and local law.]*
2. **Grounds for termination of tenancy.** The PHA may only terminate the tenancy for good cause, which includes, but is not limited to, the following:
  - (A) Criminal activity or alcohol abuse as provided in paragraph (4) of this section.
  - (B) Failure to accept the PHA's offer of a lease revision to an existing lease: with written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect; and with the offer specifying a reasonable time limit within that period for acceptance by the family.
3. **Lease termination notice.** The PHA must give notice of lease termination in accordance with State and local laws.
4. **PHA termination of tenancy for criminal activity or alcohol abuse.**
  - (A) **Evicting on the basis of drug-related criminal activity.**
    - (1) **Methamphetamine conviction.** The PHA must immediately terminate the tenancy if the PHA determines that any member of the household has been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.
    - (2) **Drug crime on or off the premises.** Drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for the PHA to terminate tenancy. In addition, a PHA may evict a family when the PHA determines that a household member is illegally using a drug or when the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.
  - (B) **Evicting on the basis of other criminal activity.**
    - (1) **Threat to other residents.** Any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA

management staff residing on the premises) or threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

**(2) *Fugitive felon or parole violator.*** The PHA may terminate the tenancy if a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under Federal or State law.

**(C) *Eviction for criminal activity – evidence and notice.***

**(1) *Evidence.*** The PHA may evict the tenant by judicial action for criminal activity in accordance with this section if the PHA determines that 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.

**(2) *Notice to Post Office.*** When a PHA evicts an individual or family for criminal activity, the PHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

**(D) *Use of criminal record.*** If the PHA seeks to terminate the tenancy for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant with a copy of the criminal record before a PHA grievance hearing, as applicable, or court trial concerning the termination of tenancy or eviction. The tenant must be given an opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial.

**(E) *Cost of obtaining criminal record.*** The PHA may not pass along to the tenant the costs of a criminal records check.

**(F) *Evicting on the basis of alcohol abuse.*** The PHA must establish standards that allow termination of tenancy if the PHA determines that a household member has:

**(1) Engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; or**

**(2) Furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.**

**(G) PHA action, generally.**

**(1) Consideration of circumstances.** In a manner consistent with policies, procedures and practices, the PHA may consider all circumstances relevant to a particular case such as the nature and severity of the offending action, the extent of participation by the leaseholder in the offending action, the effects that the eviction would have on family members not involved in the offending activity, the extent to which the leaseholder has taken steps to prevent or mitigate the offending action, the amount of time that has passed since the criminal conduct occurred, whether the crime or conviction was related to a disability, and whether the individual has engaged in rehabilitative or community services.

**(2) Exclusion of culpable household member.** The PHA may require a tenant to exclude a household member to continue to reside in the dwelling unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

**(3) Consideration of rehabilitation.** In determining whether to terminate tenancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA 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. 13662). For this purpose, the PHA 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.

**(4) Nondiscrimination limitation.** The PHA's eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

**Section 12: No automatic lease renewal.** Upon expiration of the lease term, the lease shall not automatically renew.

**Section 13: Grievance procedures.** [The lease may include hearing or grievance procedures and may explain when the procedures are available to the family.]

**Section 14: Provision for modifications.** This lease may be modified at any time by written agreement of the tenant and the PHA. Modification of the lease must be evidenced by a written rider or amendment to the lease, executed by both parties, except as permitted under 24 CFR 966.5, which allows modifications of the lease by posting of policies, rules and regulations.

**Section 15: Signature clause.** By Tenant's signature below, Tenant and household agree to the terms and conditions of this lease and all additional documents made a part of the lease by reference. By the signature(s) below I/we also acknowledge that the Provisions of this Lease Agreement have been received and thoroughly explained to me/us.

Tenant (Head of household): \_\_\_\_\_ Date: \_\_\_\_\_

Co-Tenant: \_\_\_\_\_ Date: \_\_\_\_\_

Co-Tenant: \_\_\_\_\_ Date: \_\_\_\_\_

Manager: \_\_\_\_\_ Date: \_\_\_\_\_

## **1. INCOME, EXCLUSIONS, AND DEDUCTIONS FROM INCOME**

To determine annual income, the Westerly Housing Authority adds the income of all family members, excluding the types and sources of income that are specifically excluded. Once the annual income is determined, the Westerly Housing Authority subtracts all allowable deductions (allowances) to determine the Total Tenant Payment.

### **ANNUAL INCOME**

#### **§ 5.609 Annual income.**

##### **(a) Annual income includes, with respect to the family:**

(1) All amounts, not specifically excluded in paragraph (b) of this section, received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and

(2) When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

##### **(b) Annual income does not include the following:**

(1) Any imputed return on an asset when net family assets total \$50,000 or less (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

##### **(2) The following types of trust distributions:**

1. (i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under § 5.603(b)

7. (A) Distributions of the principal or corpus of the trust, and

8. (B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

2. (ii) For a revocable trust under the control of the family or household, any distributions from the trust, except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

##### **(3) Earned income of children under the 18 years of age.**

(4) Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.

(5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.

(6) Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.

(7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled.

(8) Income of a live-in aide, foster child, or foster adult as defined in §§ 5.403 and 5.603, respectively.

(9)

3. (i) Any assistance that section 479B of the Higher Education Act of 1965, as amended (20 U.S.C. 1087uu), requires be excluded from a family's income; and

4. (ii) Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

9. (A) Student financial assistance, for purposes of this paragraph (9)(ii), means a grant or scholarship received from—

1. (1) The Federal government;
2. (2) A State, Tribe, or local government;
3. (3) A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3);
4. (4) A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
5. (5) An institution of higher education.

10. (B) Student financial assistance, for purposes of this paragraph (9)(ii), does not include—

6. (1) Any assistance that is excluded pursuant to paragraph (b)(9)(i) of this section.



7. (2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to paragraph (b)(9)(i) of this section);

8. (3) Gifts, including gifts from family or friends; or

9. (4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or paragraph (b)(9)(i), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit. This calculation is described further in paragraph (b)(9)(i)(E) of this section.

11. (C) Student financial assistance, for purposes of this paragraph (b)(9)(ii) must be:

10. (1) Expressly for tuition, books, room and board, or other fees required and charged to a student by the education institution;

11. (2) Expressly to assist a student with the costs of higher education; or

12. (3) Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

12. (D) Student financial assistance, for purposes of this paragraph (b)(9)(ii), may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance consistent with this paragraph (b)(9)(ii).

13. (E) When the student is also receiving assistance excluded under paragraph (b)(9)(i) of this section, the amount of student financial assistance under this paragraph (b)(9)(ii) is determined as follows:

13. (1) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is equal to or exceeds the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, none of the assistance described in this paragraph (b)(9)(ii) of this section is considered student financial assistance excluded from income under this paragraph (b)(9)(ii)(E).

14. (2) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is less than the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, the amount of assistance described in paragraph (b)(9)(ii) of this section that is considered student financial assistance excluded under this paragraph is the lower of:

(i) the total amount of student financial assistance received under this paragraph (b)(9)(ii) of this section, or

(ii) the amount by which the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section exceeds the assistance excluded under paragraph (b)(9)(i) of this section.

(10) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by Federal, State, or local government.

(11) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

(12)

5. (i) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

6. (ii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g., special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

7. (iii) Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development;

8. (iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program unless those amounts are excluded under paragraph (b)(9)(i) of this section.

(13) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.

(14) Earned income of dependent full-time students in excess of the amount of the deduction for a dependent in § 5.611.

(15) Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611.

(16) Deferred periodic amounts from Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

(17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance.

(18) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit.

(19) Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

(20) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

(21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

(22) Amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in paragraph (b) of this section apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

(23) Replacement housing "gap" payments made in accordance with 49 CFR part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments.

(24) Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies. Nonrecurring income includes:

9. (i) Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.

10. (ii) Direct Federal or State payments intended for economic stimulus or recovery.

11. (iii) Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.

12. (iv) Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.
13. (v) Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries).
14. (vi) Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.
15. (vii) Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.

(25) Civil rights settlements or judgments, including settlements or judgments for back pay.

(26) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such accounts shall be income at the time they are received by the family.

(27) Income earned on amounts placed in a family's Family Self Sufficiency Account.

(28) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

16. (i) Net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations; and

17. (ii) 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.

(c) **Calculation of Income.** The PHA or owner must calculate family income as follows:

(1) **Initial occupancy or assistance and interim reexaminations.** The PHA or owner must estimate the income of the family for the upcoming 12-month period:

18. (i) To determine family income for initial occupancy or for the initial provision of housing assistance; or

19. (ii) To determine family income for an interim reexamination of family income under §§ 5.657(c), 960.257(b), or 982.516(c) of this title.

## **5.611 Adjusted income.**

*Adjusted income* means annual income (as determined under § 5.609) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

**(a) Mandatory deductions.**

14. (1) \$480 for each dependent, which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25.

15. (2) \$525 for any elderly family or disabled family, which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25.

16. (3) The sum of the following, to the extent the sum exceeds ten percent of annual income:

15. (i) Unreimbursed health and medical care expenses of any elderly family or disabled family; and

16. (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with a disability, to the extent necessary to enable any member of the family (including the member who is a person with a disability) to be employed. This deduction may not exceed the combined earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

17. (4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

**(b) Additional deductions.**

18. (1) For public housing, the Housing Choice Voucher (HCV) and the Section 8 moderate rehabilitation programs (including the moderate rehabilitation Single-Room Occupancy (SRO) program), a PHA may adopt additional deductions from annual income.

17. (i) **Public housing.** A PHA that adopts such deductions will not be eligible for an increase in Capital Fund and Operating Fund formula grants based on the application of such deductions. The PHA must establish a written policy for such deductions.

18. (ii) **HCV, moderate rehabilitation, and moderate rehabilitation Single-Room Occupancy (SRO) programs.** A PHA that adopts such deductions must have sufficient funding to cover the increased housing assistance payment cost of the deductions. A PHA will not be eligible for an increase in HCV renewal funding or moderate rehabilitation program funding for subsidy costs resulting from such deductions. For the HCV program, the PHA must include such deductions in its administrative plan. For moderate rehabilitation, the PHA must establish a written policy for such deductions.

19. (2) For the HUD programs listed in § 5.601(d), the responsible entity must calculate such other deductions as required and permitted by the applicable program regulations.

**(c) Financial hardship exemption for unreimbursed health and medical care expenses and reasonable attendant care and auxiliary apparatus expenses.**

20. (1) **Phased-in relief.** This paragraph provides financial hardship relief for families affected by the statutory increase in the threshold to receive health and medical care expense and reasonable attendant care and auxiliary apparatus expense deductions from annual income.

19. (i) **Eligibility for relief.** To receive hardship relief under this paragraph (c)(1), the family must have received a deduction from annual income because their sum of expenses under paragraph (a)(3) of this section exceeded 3 percent of annual income as of January 1, 2024.

20. (ii) **Form of relief.**

1. (A) The family will receive a deduction totaling the sum of the expenses under paragraph (a)(3) of this section that exceed 5 percent of annual income.

2. (B) Twelve months after the relief in this paragraph (c)(1)(ii) is provided, the family must receive a deduction totaling the sum of expenses under paragraph (a)(3) of this section that exceed 7.5 percent of annual income.

3. (C) Twenty-four months after the relief in this paragraph (c)(1)(ii) is provided, the family must receive a deduction totaling the sum of expenses under paragraph (a)(3) of this section that exceed ten percent of annual income and the only remaining relief that may be available to the family will be paragraph (d)(1) of this section.

4. (D) A family may request hardship relief under paragraph (c)(2) of this section prior to the end of the twenty-four-month transition period. If a family making such a request is determined eligible for hardship relief under paragraph (c)(2) of this section, hardship relief under this paragraph ends and the family's hardship relief shall be administered in accordance with paragraph (c)(2) of this section. Once a family chooses to obtain relief under paragraph (c)(2) of this section, a family may no longer receive relief under this paragraph.

21. (2) **General.** This paragraph (c)(2) provides financial relief for an elderly or disabled family or a family that includes a person with disabilities that is experiencing a financial hardship.

21. (i) **Eligibility for relief.**

5. (A) To receive hardship relief under this paragraph (c)(2), a family must demonstrate that the family's applicable health and medical care expenses or reasonable attendant care and auxiliary apparatus expenses increased or the family's financial hardship is a result of a change in circumstances (as defined by the responsible entity) that would not otherwise trigger an interim reexamination.

6. (B) Relief under this paragraph (c)(2) is available regardless of whether the family previously received deductions under paragraph (a)(3) of this section, is currently receiving relief under paragraph (c)(1) of this section, or previously received relief under paragraph (c)(1) of this section.

22. (ii) **Form and duration of relief.**

7. (A) The family will receive a deduction for the sum of the eligible expenses in paragraph (a)(3) of this section that exceed 5 percent of annual income.

8. (B) 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. However, responsible entities may, at their discretion, extend the relief for one or more additional 90-day periods while the family's hardship condition continues.

(d) **Exemption to continue child care expense deduction.** A family whose eligibility for the child care expense deduction is ending may request a financial hardship exemption to continue the child care expense deduction under paragraph (a)(4) of this section. The responsible entity must recalculate the family's adjusted income and continue the child care deduction if the family demonstrates to the responsible entity'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 employed or furthering his or her education. The hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days. Responsible entities, at their discretion, may extend such hardship exemptions for additional 90-day periods based on family circumstances.

(e) **Hardship policy requirements.**

22. (1) **Responsible entity determination of family's inability to pay the rent.** The responsible entity must establish a policy on how it defines what constitutes a hardship under paragraphs (c) and (d) of this section, which includes determining the family's inability to pay the rent, for purposes of determining eligibility for a hardship exemption under paragraph (d) of this section.

23. (2) **Family notification.** The responsible entity must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from the hardship exemption. The notice must also inform the family of when the hardship exemption will begin and expire (*i.e.*, the time periods specified under paragraph (c)(1)(ii) of this section or within 90 days or at such time as the responsibility entity determines the exemption is no longer necessary in accordance with paragraphs (c)(2)(ii)(B) or (d) of this section).

*Earned income disregard:*

**EFFECTIVE DECEMBER 31, 2023, NO NEW EARNED INCOME DISALLOWANCES WILL BE ALLOWED. ALL PERSONS CLAIMING AN EID WHO ARE CURRENTLY ON THE PROGRAM EFFECTIVE 12/31/23 WILL BE ALLOWED TO COMPLETE THEIR DISALLOWANCES.**

**Definitions.** The following definitions apply for purposes of this section.

*Baseline income.* The annual income immediately prior to implementation of the disallowance described in paragraph (c)(1) of this section of a person who is a member of a qualified family.

*Disallowance. Exclusion from annual income.*

*Previously unemployed includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.*

*Qualified family. A family residing in public housing:*

*(i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;*

*(ii) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or*

*(iii) Whose annual income increases, as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the PHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance - provided that the total amount over a six-month period is at least \$500.*

*(b) Disallowance of earned income -*

*(1) Initial 12-month exclusion. During the 12-month period beginning on the date on which a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from the annual income (as defined in § 5.609 of this title) of a qualified family any increase in the income of the family member as a result of employment over the baseline income of that family member.*

*(2) Phase-in of rent increase. Upon the expiration of the 12-month period defined in paragraph (b)(1) of this section and for the subsequent 12-month period, the PHA must exclude from the annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.*

*(3) Maximum 2-year disallowance. The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 24-month period. It applies for a maximum of 12 months for disallowance under paragraph (b)(1) of this section and a maximum of 12 months for disallowance under paragraph (b)(2) of this section, during the 24-month period starting from the initial exclusion under paragraph (b)(1) of this section.*



*(4) Effect of changes on currently participating families. Families eligible for and participating in the disallowance of earned income under this section prior to May 9, 2016 will continue to be governed by this section in effect as it existed immediately prior to that date.*

*(c) **Inapplicability to admission.** The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).*

*(d) **Individual Savings Accounts.** As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a PHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:*

*(1) The PHA must advise the family that the savings account option is available;*

*(2) At the option of the family, the PHA must deposit in the savings account the total amount that would have been included in tenant rent payable to the PHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;*

*(3) Amounts deposited in a savings account may be withdrawn only for the purpose of:*

*(i) Purchasing a home;*

*(ii) Paying education costs of family members;*

*(iii) Moving out of public or assisted housing; or*

*(iv) Paying any other expense authorized by the PHA for the purpose of promoting the economic self-sufficiency of residents of public housing;*

*(4) The PHA must maintain the account in an interest bearing investment and must credit the family with the net interest income, and the PHA may not charge a fee for maintaining the account;*

*(5) At least annually the PHA must provide the family with a report on the status of the account; and*

*(6) If the family moves out of public housing, the PHA shall pay the tenant any balance in the account, minus any amounts owed to the PHA.*

*11. Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts;*

12. *Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;*
13. *Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or*
14. *Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits. These exclusions include:*
  - a. *The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));*
  - b. *Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(f)(1), 5058);*
  - c. *Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));*
  - d. *Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);*
  - e. *Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));*
  - f. *Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, section 6);*
  - g. *The first \$2000 of per capita shares received from judgment funds awarded by the Indian National Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;*
  - h. *Amounts of scholarships funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070), including awards under Federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if the individual is over the age of 23 with dependent children (Pub. L. 109-115, section 327) (as amended). See definition of Tuition in Glossary;*

- i. *Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(g));*
- j. *Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (Pub. L. 101-201) or any other fund established pursuant to the settlement in In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);*
- k. *Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 25 U.S.C. 1728);*
- l. *The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);*
- m. *Earned income tax credit (EITC) refund payments received on or after January 1, 1991, for programs administered under the United States Housing Act of 1937, title V of the Housing Act of 1949, section 101 of the Housing and Urban Development Act of 1965, and sections 221 (d)(3), 235, and 236 of the National Housing Act (26 U.S.C. 32(l));*
- n. *Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);*
- o. *Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));*
- p. *Any allowance paid under the provisions of 38 U.S.C. 1883(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);*
- q. *Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));*
- r. *Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2)).*
- s. *Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C. 1760(e)) and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);*
- t. *Payments, funds or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));*

- u. *Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. § 1437a(b)(4));*
- v. *Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111-269; 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.) and administered by the Office of Native American Programs;*
- w. *A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., 816 F. Supp. 2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);*
- x. *Any amounts in an “individual development account” as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));*
- y. *Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 “Exclusion from Income of Payments under Recent Tribal Trust Settlements” (25 U.S.C. 117b(a)); and*
- z. *Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93-288, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d)).*
- aa. *ABLE accounts created under the Achieving a Better Life Experience Act of 2014 (ABLE Act) are excluded from the calculation of both income and assets.*

*The PHA will not provide exclusions from income in addition to those already provided for by HUD. See the Excluded Income chart in the Verifications section for verification requirements.*

#### **DEDUCTIONS FROM ANNUAL INCOME**

*The following deductions will be made from annual income:*

- A. *\$480 for each dependent;*
- B. *\$400 for any elderly family or disabled family;*
- C. *The sum of the following, to the extent the sum exceeds three percent of annual income:*

1. *Unreimbursed medical expenses of any elderly family or disabled family including any fee paid by the participant for the Medicare Prescription Drug Program; and*
  2. *Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed, but this allowance may not exceed the earned income received by family members who are 18 years of age or older who are able to work because of such attendant care or auxiliary apparatus.*
- D. *Reasonable childcare expenses for children 12 and younger necessary to enable a member of the family to be employed or to further his or her education. This deduction shall not exceed the amount of employment income that is included in annual income.*
- E. *See also, the Verification of Income Section for the requirements for verification of Income and Income Exclusions.*

#### **RECEIPT OF A LETTER OR NOTICE FROM HUD CONCERNING INCOME**

- A. *If a public housing resident receives a letter or notice from HUD concerning the amount or verification of family income, the letter shall be brought to the person responsible for income verification within thirty (30) calendar days of receipt by the resident.*
- B. *The Westerly Housing Authority shall reconcile any difference between the amount reported by the resident and the amount listed in the HUD communication. This shall be done as promptly as possible.*
- C. *After the reconciliation is complete, the PHA shall, if appropriate, adjust the resident's rent beginning at the start of the next month. If the reconciliation is completed during the final five (5) calendar days of the month, the new rent shall take effect on the first day of the second month following the end of the current month. In addition, if the resident had not previously reported the proper income, the PHA shall do one of the following:*
1. *Immediately collect the back rent due to the agency;*
  2. *Establish a repayment plan for the resident to pay the sum due to the agency;*
  3. *Terminate the lease and evict for failure to report income; or*

4. *Terminate the lease, evict for failure to report income, and collect the back rent due to the agency.*

#### **COOPERATING WITH WELFARE AGENCIES**

*The PHA will make its best efforts to enter into cooperation agreements with local welfare agencies under which the welfare agencies will agree:*

- A. *To target assistance, benefits and services to families receiving assistance in the public housing and Section 8 tenant-based assistance program to achieve self-sufficiency; and*
- B. *To provide written verification to the PHA concerning welfare benefits for families applying for or receiving assistance in our housing assistance programs.*

#### **COOPERATING WITH LAW ENFORCEMENT AGENCIES**

*The PHA will comply, on a case-by-case basis, with information requests from Federal, State or local law enforcement officers regarding possible fugitive felons and/or a parole or probation violators. The PHA will supply upon legitimate request (1) the current address, (2) Social Security number and (3) photograph (if available) of any recipient of assistance.*

*The Federal, State or local enforcement officer must submit a request that is (1) written, (2) on law enforcement agency letterhead, and (3) is signed by the requesting officer and his or her immediate supervisor. The request for information must provide the name of the fugitive felon and/or parole or probation violator being sought, and may include other personal information used for identification. The request should also comply with the following requirements:*

- A. *The law enforcement agency shall notify PHA that the fugitive felon and/or parole or probation violator (i) is fleeing to avoid prosecution, custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor; or (ii) is violating a condition of probation or parole imposed under Federal or State law; or (iii) has information that is necessary for the officer to conduct his/her official duties;*
- B. *The location or apprehension of the recipient is within the PHA's official duties; and,*
- C. *The request is made in the proper exercise of the law enforcement agency's official duties.*

## **2. VERIFICATIONS**

### **A. General Policies**

1. *As families approach the top of the Waiting List, no earlier than ninety (90) days prior to offer, the PHA will begin to verify the following items according to the following PHA's Verification Procedures and in accordance with verification guidance provided by HUD in PIH Notice 2023-27 and any subsequent guidance issued by HUD.*
  - a. *Family Composition and type*
  - b. *Social Security Numbers of all Family Members.*
  - c. *Citizenship or eligible immigration status*
  - d. *Annual Income*
  - e. *Assets and Asset Income*
  - f. *Deductions from Income*
  - g. *Information used in Applicant Screening*
2. *Verification Procedures will be modified as needed to accommodate persons with disabilities. Please see Appendix I to see what needs to be verified and by what method.*
3. *The PHA will handle information obtained through the verification process in accordance with the PHA's EIV Security policy.*
4. *Applicants/residents will not be charged for any cost related to verification of information.*
5. *Consent Forms: Applicants must cooperate fully in obtaining or providing the necessary verifications.*
  - a. *All adult applicants must sign form HUD-9886, Authorization for Release of Information upon admission to the program, new family members or persons reaching the age of 18 must also sign a HUD 9886 form. The purpose of this form is to facilitate automated data collection and computer matching from specific sources. This form covers only release of information on earned income and unemployment income to the PHA and IRS/SSA information to HUD. Applicants must also sign the HUD 52675 Debts owed.*
  - b. *Only HUD is authorized to collect information directly from IRS and Social Security Administration.*

- c. *Adult family members will be asked to sign releases on other forms as needed to collect information to determine the family's eligibility and level of assistance.*
- d. *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 existing residents. The family may request an informal hearing.*
6. *The PHA is authorized by HUD to use five methods to verify family information, in the following order of priority see Appendix 1:*
  - a. *Up-front Verification whenever available*
  - b. *Third-Party Written Verification*
  - c. *Third-Party Oral Verification*
  - d. *Review of Documents*
  - e. *Self-Certification*
7. *When up-front verification is not available, the PHA will diligently seek third-party verifications using a combination of written and oral requests to verification sources. Information received orally from third parties may be used either to clarify information provided in writing by the third party or as independent verification when written third-party verification is not received in a timely manner. (24 CFR § 960.259(c)(1)) which states:*
8. *PHA responsibility for reexamination and verification.*
  - (1) *Except as provided in paragraph (c)(2) of this section, the PHA must obtain and document in the family file third-party verification of the following factors, or must document in the file why third-party verification was not available:*
    - (i) *Reported family annual income;*
    - (ii) *The value of assets;*
    - (iii) *Expenses related to deductions from annual income; and*
    - (iv) *Other factors that affect the determination of adjusted income or income-based rent.*
  1. *The PHA will document the reasons when the PHA uses a lesser form of verification than third-party.*



2. *When Third-Party Verification is not required. When legal documents are the primary source, such as birth certificates or other legal documentation of birth, third-party verification is not required.*

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

b. *The PHA will use self-certification when the market value of assets is less than \$50,000 annually*

c. *When it is known that an income source does not have the ability to provide written or oral third-party verification, e. g., the source's privacy rules prohibit the source from disclosing information, the PHA will rely on viewing documents.*

d. *The PHA will determine that third-party verification is not available when there is a service charge for verifying an asset or expense and the family has original documents that provide the necessary information. If the family cannot provide the original documents, the PHA will pay the service charge required unless it is not cost effective. (Cost of postage and envelopes to obtain third-party verifications is NOT considered unreasonable cost.)*

3. *Self-Certification*

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

b. *The self-certification must be made in a format acceptable to the PHA and must be signed by the family member whose information or status is being verified.*

c. *Certifications must be signed in the presence of a PHA representative.*

4. *Verification Documents*

a. *Any family-supplied documents used for verification must be originals, not photocopies, which are no more than sixty (60) days old.*

b. *Documents must not be damaged, altered or illegible.*

c. *The PHA will accept a document dated up to six (6) months before the effective date of the family's re-examination if the document represents the most recent scheduled report from a source, e.g., if the holder of a pension*

*annuity provides semi- annual reports, the PHA would accept the most recent report.*

- d. Print-outs from Internet pages are considered original documents*
  - e. Staff members who view an original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed. The staff member must then sign the copy.*
  - f. Family self-certifications must be made in a format acceptable to the PHA and must be signed in the presence of an PHA representative.*
- 5. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that the PHA followed all of the PHA's policies and procedures for verification. The documentation should allow a staff member or HUD reviewer to understand the process followed and conclusions reached.*
- 6. Age of Verifications:*
- a. Only verified information that is less than ninety (90) days old may be used for certification or re-certification.*
  - b. Verified information that is more than ninety (90) days old must be re-verified before the family is housed.*
  - c. Verified information not subject to change, such as birth dates need not be re-verified at reexamination.*
- 7. All information provided to the PHA relating to incidents of domestic violence, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault or stalking, will be retained in confidence by the PHA and will be neither entered into any shared database nor provided to a related entity, except to the extent that the disclosure is (1) requested or consented by the individual in writing; (ii) required for use in an eviction proceeding or termination of assistance; or (iii) otherwise required by applicable law.*
- 8. All documentation needed for the application or recertification process must be returned within 72 hours to be considered.*

*B. Social Security Numbers (24 CFR § 5.210) which states;*

*§ 5.210 Purpose, applicability, and Federal preemption.*

*(a) Purpose. This subpart B requires applicants for and participants in covered HUD programs to disclose, and submit documentation to verify, their Social Security Numbers (SSNs).*

*This subpart B also enables HUD and PHAs to obtain income information about applicants and participants in the covered programs through computer matches with State Wage Information Collection Agencies (SWICAs) and Federal agencies, in order to verify an applicant's or participant's eligibility for or level of assistance. The purpose of this subpart B is to enable HUD to decrease the incidence of fraud, waste, and abuse in the covered programs.*

*(b) Applicability.*

*(1) This subpart B applies to mortgage and loan insurance and coinsurance and housing assistance programs contained in chapter II, subchapter B, and chapters VIII and IX of this title.*

*(2) The information covered by consent forms described in this subpart involves income information from SWICAs, and wages, net earnings from self-employment, payments of retirement income, and unearned income as referenced at 26 U.S.C. 6103. In addition, consent forms may authorize the collection of other information from applicants and participants to determine eligibility or level of benefits.*

*(c) Federal preemption. This subpart B preempts any State law, including restrictions and penalties, that governs the collection and use of income information to the extent State law is inconsistent with this subpart.*

- 1. Families are required to provide a Social Security Number for all family members prior to admission.*
- 2. If a Family member does not have the original Social Security card issued by the Social Security Administration, PHA will accept photo identification and verification of the number from the Social Security Office.*
- 3. If a child-under-six is added to the family in the six-month period prior to the household's date of admission then documentation verifying the child's social security information need only be supplied within 90 days of the date of admission. One additional 90-day extension may be added, if the applicant's failure to meet the first timeline was outside his or her control.*

*C. Citizenship Verification*

*Verification of citizenship or eligible immigration status will be carried out in accordance with the PHA's Verification Procedures.*

- 1. In the case of a "Mixed Family" applicant, a member who is a non-citizen not claiming to have eligible status must sign, or must have another family member sign, a certification that they do not have eligible status.*
- 2. If no family member is determined to be either a citizen or an eligible immigrant,*

*the family will be denied assistance.*

3. *Restrictions on Denial, Delay or Termination of Assistance.*

*Assistance may not be denied or delayed (or in case of re-examinations, reduced or terminated) on the basis of immigration status if:*

a. *verification requests were submitted in a timely manner but Department of Homeland Security has not completed the procedure*

b. *the family member for whom required evidence has not been submitted has moved from the assisted unit (applicable to re-examinations)*

c. *the family member who is determined not to be eligible following verification process has moved from the assisted unit (applicable to re-examinations)*

d. *the Dept. of Homeland Security appeals process has not been completed (24 CFR § 5.514)*

e. *Assistance is prorated according to 24 CFR § 5.520 for a mixed family see definitions under Citizenship.*

f. *Assistance for a mixed family is continued in accordance with 24 CFR § 5.516 and 5.518 (applicable to re-examinations)*

g. *Deferral of termination of assistance is granted in accordance with 24 CFR § 5.516 and 5.518 (applicable to re-examinations)*

h. *Informal hearing process has not been completed (24 CFR § 5.514)*

4. *Denial or Termination of Assistance.*

*Assistance shall be denied (or in the case of existing residents, terminated) if:*

a. *Evidence of citizenship and eligible immigration status is not submitted by the family within the required time frame or within any extension granted.*

1) *Extensions may be granted, in writing, for no more than thirty (30) days*

2) *Denial of extensions will also be in writing, with reasons provided.*

b. *Evidence of citizenship and eligible immigration status was timely submitted but Dept. of Homeland Security verifications do not verify eligible immigration status and*

- 1) *family does not pursue Dept. of Homeland Security appeal or informal hearing rights, or*
  - 2) *Dept. of Homeland Security appeal and informal hearing rights are pursued but final decisions are against the family*
  - c. *PHA determines that a family member has knowingly permitted another ineligible individual to reside on a permanent basis in the assisted unit (without the PHA's knowledge and without the assistance having been prorated because of this individual) In such case, termination will be for at least twenty-four (24) months.)*
5. *Notice of Denial (or termination). Notice shall state:*
- a. *that assistance will be denied or terminated and give the reason*
  - b. *that family may be eligible for prorated assistance*
  - d. *in case of existing resident, the criteria and procedures for obtaining relief under the provisions for preservation of families.*
  - e. *that family has right to appeal the Dept. of Homeland Security results and submit additional documentation supporting the appeal*
  - f. *that family has right to request an informal hearing with the PHA either upon completion of Dept. of Homeland Security appeal or in lieu of Dept. of Homeland Security appeal.*
  - g. *for applicants, that assistance may not be delayed until the conclusion of the Dept. of Homeland Security appeal, but may be delayed during the pending of the informal hearing process.*
6. *Appeal to Dept. of Homeland Security*
- a. *After the PHA notifies family of the results of the Dept. of Homeland Security verification, the family has thirty (30) days to send to Dept. of Homeland Security for an appeal:*
    - 1) *a cover letter indicating their request for an appeal of the verification results*
    - 2) *any additional documentation supporting the appeal and a copy of the verification request form used to process the secondary verification*
  - b. *Family must provide the PHA with a copy of the written request and proof of mailing.*

c. Within thirty (30) days of receipt of the request, Dept. of Homeland Security will render a decision or notify the family of the reasons for any delay.

d. Upon receipt of Dept. of Homeland Security decision, the PHA will notify the family of its right to request an informal hearing on the ineligibility determination.

7. Informal Hearing

a. Family may request a hearing in lieu of an Dept. of Homeland Security appeal or following it.

b. Family must request the hearing within thirty (30) days of the notice of ineligibility determination based on immigration status by the PHA, if it does not wish to appeal to DHS; if it has appealed to Dept. of Homeland Security, then the family must request the hearing within thirty (30) days of the Dept. of Homeland Security appeal decision.

c. The hearing will be conducted according to the PHA's informal hearing procedure as outlined in Section XI.

d. The PHA will provide the family with a written final decision and the reasons for that decision, based solely on the facts presented at the hearing, within fourteen (14) days of the date of the informal hearing.

8. Retention of documents. The PHA will retain for a minimum of five (5) years all of the documents related to the Dept. of Homeland Security appeal or informal hearing process. (24 CFR § 5.514)

**Table J1: Mandatory and Discretionary Use of EIV by PHAs (PIH 2023-27)**

Report Title	Report Description	Frequency of Use	PHAs/MFH Owners
Debts Owed to PHAs & Terminations	Allows users to access information concerning former tenants who left owing a debt to a PHA or who had their voucher terminated for cause.	At the time of processing an applicant family for admission, and to enter debt information or terminations for families who have ended program participation.	PHAs only Report does not exist in MFH EIV.
Deceased Tenants Report	Identifies tenants reported by Social Security Administration (SSA) as being deceased.	At least quarterly	PHAs/MFH Owners

Existing Tenant Search	Identifies applicants who may be receiving assistance at another Multifamily project or PIH location	At the time of processing an applicant family for admission	PHAs/MFH Owners
Failed EIV Prescreening Report	Identifies tenants who have missing or invalid personal identifiers (last name, date of birth, SSN) in HIP/TRACS. These tenants will not be sent to SSA from EIV for the SSA identity test	Monthly	PHAs/MFH Owners
Failed Verification Report (Failed SSA Identity Test)	Identifies tenants whose personal identifiers (last name, date of birth, SSN) do not match the SSA database	Monthly	PHAs/MFH Owners

	PHAs that admit families using a self-certification of SSN must review the Failed SSN Verification Report monthly to identify and follow up on new issues		
Identity Verification Report	Identifies tenants that failed SSA verification, and failed EIV pre-screening	Monthly	PHAs/MFH Owners

<p>Income Discrepancy Report for MFH Programs</p>	<p>Identifies households where there is an income discrepancy in the wage, unemployment, and SSA benefit information reported in EIV and wage, unemployment, and SSA benefit information reported in TRACS for the period of income used for discrepancy analysis. The report serves as a tool to alert MFH Owners that there may be a discrepancy in the income reported by the tenant during the period of income used for the discrepancy analysis.</p>	<p>Must be used at annual reexamination. MFH Owners may use the report at other intervals, in accordance with the MFH Owner's written EIV policies and procedures. MFH Owners are not required to use the report at annual reexamination if they used Safe Harbor verification to determine the family's income at the last reexamination.</p> <p>*See note under Summary above about updates to the MFH Income Discrepancy Report.</p>	<p>MFH Owners</p>
<p>Income Information for PIH Programs  Income Report for MFH Programs</p>	<p>Provides employment and income reported by HHS and SSA for each household member that passes the SSA identity test.</p> <p>Identifies tenants who:</p> <ul style="list-style-type: none"> <li>• May not have reported complete and accurate income information and/or</li> <li>• May be receiving multiple subsidies.</li> </ul>	<p>Must be used at annual reexamination, not required at interim reexaminations. PHAs/Owners may use, if desired. PHAs are not required to use at annual reexamination if they use Safe Harbor verification to determine the family's income.</p>	<p>PHAs/MFH Owners</p>
<p>Income Validation Tool Report for PIH Programs</p>	<p>Provides projections of discrepant income for wages, unemployment compensation, and SSA benefits pursuant to HUD's data sharing agreements with the Department of Health and Human Services</p>	<p>PHAs are required to obtain an EIV Income and Income Validation Tool Report for each family any time the PHA conducts an annual reexamination of family income and composition. PHAs may</p>	<p>PHAs</p>



	(HHS) using the National Directory of New Hires (NDNH) database, and the SSA	use the report at other intervals, in accordance with the PHA's ACOP or Administrative Plan. PHAs are not required to use the report at annual reexamination if they used Safe Harbor verification to determine the family's income at the last reexamination.  *See note under Summary above about updates to the MFH and Public Housing Income Discrepancy Reports.	
Multiple Subsidy Report	Identifies tenants who may be receiving rental assistance at more than one location.	At least quarterly	PHAs/MFH Owners
New Hires Report	Identifies tenants who have new employment within the last six months. Report is updated monthly.	PHAs must review this information at annual reexamination except when the PHA uses Safe Harbor verification to determine the family's income.  PHAs that do not require families to undergo interim reexaminations (IRs) for income increases after an IR decrease do not need to review this report at all between a family's annual reexamination. If the PHA policy is to require an IR for increases in income after an IR decrease, then the PHA must review the report quarterly after the family's IR decrease.	PHAs/MFH Owners
No Income Reported by HHS or SSA	Identifies tenants who passed the SSA identity test but where no income was reported by HHS or SSA. This scenario does not mean that the tenant does not have any income. PHAs must	As identified in a PHA's ACOP or Administrative Plan or a MFH Owner's written EIV policies and procedures.	PHAs/MFH Owners

	obtain written, third-party verification of any income reported by the tenant		
No Income Reported on 50059	Identifies households where there is no income listed on the HUD-50059	As identified in MFH Owner's written EIV policies and procedures	MFH Owners
Summary Report	Summary of household information from the current active certification in the TRACS file at the time of the income match.	Must be used at annual reexamination, not required at interim reexaminations. MFH Owners may use the report at other intervals, if desired, as described in the MFH Owner's written EIV policies and procedures.	MFH Owners

*Determination of Income using other Means Tested Public Assistance (i.e. Safe Harbor)*

*PHAs may determine a family's annual income, including income from Asset, prior to the application of any deductions based on income determinations within the previous 12-month period, using income determination from the following types of means-tested federal public assistance programs:*

- TANF*
- MEDICAIDE*
- SNAP*
- EITC*
- LIHTC*
- WIC*
- SSI*
- Other programs administered by the Secretary*
- Other means tested forms of federal public assistance for which HUD has established a*
- Memorandum of Understanding (MOU).*
- Other federal benefit determinations made by other means tested federal programs that the Secretary determines to have comparable reliability and announced through a Federal Register notice.*

*If the PHA decides to use the annual income determination from one of the above listed forms of means tested federal assistance, the must updating the income information by means of a third-party verification. The third-party verification must state the family size, must be for the entire*

family which are listed in the document must match the family's composition in the assisted unit, except for household members and it must state the amount of the family annual income. The annual income does not need to be broken down by family member or income type. Annual income includes income earned from assets, so if a PHA is using a Safe Harbor to verify income, inquires for asset income does not need to be accomplished. The only time is if on declaration of net family assets, the value of self-declared assets in excess of \$100,000.00. The Safe Harbor verification may be in the form of an award letter from the relevant federal program and must show that the family's income determination was made in the previous 12 months. Safe Harbor documentation will be considered acceptable if any of the following dates fall into the 12-month period prior to the receipt of the documentation by the PHA:

- Income determination effective date
- Program administrator's signature date
- Family's signature date
- Report effective date or
- Other report specific dates that verify the income determination date.

If the PHA decides to use a Safe Harbor verification method, the family must report changes in income that meet the reporting requirements and occur after the effective date of the action (New Admission, Interim Reexamination or Annual Reexamination.)

## APPENDIX I

Level	Verification Technique	Ranking/Order of Acceptability
3	Upfront Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system	<p>Highest</p> <p>PHAS must pull the EIV Income Report for each family at every Annual Reexamination.</p> <p>EIV may be used as the sole verification of Social Security income.</p> <p>EIV income information may be used to calculate other types of annual income when family agrees. See Level 4 for more information.</p>
3	Upfront Income Verification (UIV) using non-EIV system (e.g., The Work Number, web-based state benefits systems, etc.)	Highest

4	<p>Written, third-party verification from the source, also known as "tenant-provided verification"</p> <p>OR</p> <p>EIV + Self-Certification</p> <p>PHAS can choose either option when both are available to verify income. PHAS must use written, third-party verification when the income type is not available in EIV (e.g., self-employment, Go Fund Me accounts, general public assistance, Veterans Administration benefits, etc.)</p>	<p>High</p> <ul style="list-style-type: none"> <li>• Written, third-party verification is used when tenant disputes EIV-reported employment and income information</li> <li>• The EIV Income Report may be used to verify and calculate income if the family self-certifies that the amount is accurate and representative of current income. The family must be provided with the information from EIV</li> </ul>
3	<p>Written, Third-Party Verification Form</p>	<p>Medium</p> <ul style="list-style-type: none"> <li>• Use if Level 5 or Level 4 verification is not available or is rejected by the PHA and when the applicant or tenant is unable to provide acceptable documentation</li> <li>• May substitute Level 2 for written, third-party verification form, only completing one of the two forms of verification before moving to self-certification</li> </ul>
2	<p>Oral Third-Party Verification</p>	<p>Medium</p>

1	<p>Self-Certification (not third-party verification)</p>	<p>Low</p> <p>Use as a last resort when unable to obtain any type of third-party verification or if specifically permitted, such as to determine actual income from assets when the family certifies that net family assets do not exceed \$50,000.</p>
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***Third-Party Verification Descriptions and Guidance***

***Upfront Income Verification (UIV) (Level 6/5):*** The verification of income before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a number of individuals. It should be noted that the EIV system is available to all PHAS as a UIV technique and that all PHAS are required to use EIV in its entirety (see paragraph J.3 on Mandated and Discretionary Use of EIV). PHAS are encouraged to continue using other non-HUD UIV tools, such as The Work Number (an automated verification system) and state government databases, to verify tenant-reported income.

***Written, Third-Party Verification (Level 4):*** An original or authentic document generated by a third-party source dated within 120 days of the date received by the PHA. For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation.

Such documentation may be in the possession of the tenant (or applicant) and is commonly referred to as tenant-provided documents. PHAS may obtain any tenant-provided documents and follow up directly with the third-party source to obtain necessary verification of information when necessary.

Examples of acceptable tenant-provided documentation (generated by a third-party source) include but are not limited to the following: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit verification letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

PHAS are required to obtain a minimum of two current and consecutive pay stubs for determining annual income from wages when they do not elect to use EIV + Self-Certification or the income type is not reported in EIV. For new income sources or when two pay stubs are not available, the PHA should determine income based on the information from a traditional written third-party verification form or the best available information.

Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written third-party verification.

When verification of assets is required, PHAS are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

EIV may be used as Level 4 verification and may be used to calculate income as long as the family agrees with the information in EIV; this practice is known as "EIV + Self-Certification." The PHA may use their discretion to determine which method of calculation is reasonable: the last 4 quarters combined or an average of any number of quarters. The EIV Income report must be pulled within 120 days prior to the reexamination effective date.

**Written, Third-Party Verification Form (Level 3):** This practice is also known as "traditional third-party verification." This type of verification is a form developed by the PHA and used uniformly for all families when needed to collect information from a third-party source. The form is completed by the third party by hand (in writing or typeset). PHAS send the form directly to the third-party source by mail, fax, or email.

The PHA may skip this level of verification before attempting Level 2, which means they will have only completed Level 3 or Level 2 verification before moving to Self-Certification.

**Oral Third-Party Verification (Level 2):** Independent verification of information by contacting the individual income/expense source(s), as identified through the UIV technique, or identified by the family, via telephone or in-person visit. PHA staff must document in the tenant file the date and time of the telephone call (or visit to the third party) and the name of the person contacted and their telephone number, along with the confirmed information.

This verification method is commonly used when the independent source does not respond to the PHAS faxed, mailed, or e-mailed request for information in a reasonable time frame (e.g., 10 business days).

The PHA may skip this level of verification if they attempted Level 3, which means they will have only completed Level 3 or Level 2 verification before moving to Self-Certification.

**Non-Third-Party Verification Technique: Self-Certification (Level 1).** The tenant submits a signed statement of reported income and/or expenses to the PHA. This verification method should be used as a last resort when the PHA has not been successful in obtaining information via all other required verification techniques. When the PHA relies on self-certification to verify income or expenses, the PHA must document in the tenant file why third-party verification was not available.

HUD does not require that a self-certification be notarized; however, HUD recommends including language on any self-certification to ensure the certifier understands the consequences of knowingly providing false information.

**Sample language:** "I/We, the undersigned, certify under penalty of perjury that the information provided here is true and correct, to the best of my knowledge and recollection. **WARNING:** Anyone who knowingly submits a false claim or knowingly makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. 287, 1001, 1010, 1012; 31 U.S.C. 3279, 3802)"

#### **Verification of Social Security Numbers:**

If an individual applicant cannot provide a Social Security Card the PHA has an option of self-certification and can accept a third party document with the applicant's name printed on it to satisfy the SSN disclosure requirement. The third party document must be:

A Bank statement

Utility Statement

Cell Phone statement

Benefit Letter

In the applicant's name, the PHA must document the file as to why this method of verification was used. Once the tenant's SSN is verified by EIV then no further verification is required, if the SSN fails the identity match, then the PHA must require the tenant to obtain and valid SSN card or a document that contains the individual's name and SSN along with other identifying information such as a Driver's license or State Issued ID card.

#### **Verification of Excluded income**

For income sources where the entire amount qualifies to be excluded from the annual income determination the PHA is not required to:

Verify the income using third party verification

Document the tenant file as to why the third party verification was not available or

*Report the income on the 50058*

*The PHA must accept the applicant or participant's self-certification as verification of excluded income. You may use the PHA application and Reexamination questionnaire as long as it includes the self-verification statement. All income sources that are partially excluded must still be verified using third party verifications and must be reported on the 50058.*





## ***EIV POLICY***

### ***PURPOSE***

*The purpose of this policy is to provide instruction and information to the PHA staff, consultants, contractors, and tenants on the acceptable use, disposition and storage of data obtained through any EIV (Enterprise Income Verification System). The PHA defines a system as an external data source that provides information either through computer matching, data storage and retrieval and transmitted either via computer, fax, or e-mail. Data received through the U.S. Mail will also be treated in the same format as EIV data.*

*This policy will also provide notice for access for dispute of data received from various EIV Systems employed by the PHA. Disputes regarding the data will be resolved in accordance with the PHA's Grievance Policy and Procedures.*

*The data in EIV contains personal information on individual tenants that is covered by the Privacy Act of 1974, (SSNs, names, DOBs, SS/SSI benefits, wages, unemployment compensation benefits and new hires (W-4)). It also includes information pertaining to rental history and debts owed to a Landlord or another Housing entity. Citizenship status is another verification that is part of EIV. The data provided via any EIV System will be protected to ensure that it is only used for official limited purposes for verifying the employment and income at the time of admission, recertification, and by OIG investigators for investigative purposes. Official use does not include sharing the information with governmental entities not involved in the recertification process used for HUD's assisted housing programs.*

*The PHA Director, or designated staff, will assure that a copy of Form HUD-9886, (Authorization for the Release of Information/Privacy Act Notice) and HUD 52675 has been signed by each member of the household age 18 years old or older or by a parent or legal guardian for verifications provided to the agency for a minor. All HUD-9886's and HUD 52675's will be placed in the resident file and will be updated on an annual basis for each tenant or minor in the household. By signing this form, the tenant authorizes the PHA to obtain and verify income and unemployment compensation information from various sources including, but not limited to, current and former employers, State agencies, The Work Number, Tenant Tracker, HANNA, Advance HR Solutions, Credit Bureau reports, the IRS, the SSA and other entities that may be indemnified in this policy in the future.*

*On January 11, 2010, HUD issued Notice H 2010-02, which includes the EIV & You Brochure and the requirement for distribution. Effective January 31, 2010, XYZ Housing will provide each tenant with the "EIV & You" brochure at the time of annual recertification, along with a copy of the, " HUD Fact Sheet," "How your Rent is Determined," and the "Resident's Rights and Responsibilities." The "EIV & You brochure must also be provided to all applicants and to new tenants at move in.*

*In addition family members will be required to complete the HUD 52675 form for verification of family history in the Debts Owed Module of EIV.*

### ***SAFEGUARDING EIV DATA:***

*The information processed by any EIV System can include wage and income data about private individuals, as well as identifying information such as Social Security Number, Address, and Employment information.*

*The PHA Executive Director, or other designated staff, will have the responsibility of ensuring compliance with the PHA security policies and procedures outlined in this document. These responsibilities include:*

- 1. Maintaining and enforcing the security procedures;*
- 2. Keeping records and monitoring security issues;*
- 3. Communicating security information and requirements to appropriate personnel, including coordinating and conducting security awareness training sessions;*
- 4. Conducting a quarterly review of all User Ids issued to determine if the users still have a valid need to access the EIV data and taking the necessary steps to ensure that access rights are revoked or modified as appropriate; and*
- 5. Reporting any evidence of unauthorized access or known security breaches and taking immediate action to address the impact of the breach including but not limited to prompt notification to appropriate authorities including the HUD Field Office.*

### ***LIMITING ACCESS TO EIV DATA***

*The PHA will restrict access to EIV data only to persons whose duties or responsibilities require access. The PHA will maintain a record of users who have approved access to the EIV data. Further, the PHA will revoke the access rights of those users who no longer require such access or modify the access rights if a change in the user's duties or responsibilities indicates a change in the current level of privilege.*

*The residents can provide written consent for the following to view EIV information to assist them in their ability to participate in the recertification process:*

- 1. Service coordinators have access to the data only if they are present at and assisting the resident with the recertification process*
- 2. Translators/interpreters*
- 3. Individuals assisting an elderly individual or a person with a disability*
- 4. Guardians*
- 5. Power of attorney*

## 6. Other family members

*EIV data will be handled in such a manner that it does not become misplaced or available to unauthorized personnel. Files containing EIV information will be labeled clearly with the following statement "CONFIDENTIAL."*

### **PHYSICAL SECURITY REQUIREMENTS**

*The PHA may use a combination of methods to provide physical security for tenant file records. These may include, but are not limited to, locked containers of various types, locked rooms that have enforced perimeters, and a locked building. The EIV data may also be maintained in locked metal file cabinets within a locked room.*

*Access to the locked file cabinets where EIV files are stored in the office will be limited even during regular working hours. The file cabinets with EIV files will be marked "AUTHORIZED PERSONNEL ONLY -CONFIDENTIAL FILES." The EIV Coordinator (Executive Director) will maintain control of the keys to the file cabinet. Locks to the office will be changed or reset whenever an employee leaves the PHA.*

*The PHA EIV Coordinator will establish and maintain the list of users who can access the restricted area. The list will indicate the type of access that the user may have to the restricted area. Tenant record files will never be left out in the open with access to individuals without permission.*

*Tenant record files will not be left on desks at lunch or other times except when being updated by the responsible party.*

### **COMPUTER SYSTEM SECURITY REQUIREMENTS**

*All computer systems and computers will have password-restricted access, password screen saver and The PHA will use a firewall to prevent access by unknown persons. The PHA will also use Antivirus software to limit data destruction or unintended transmission via viruses, worms, Trojan horses or other malicious means. The EIV Coordinator will be responsible for maintaining and updating the firewall and anti-virus software as well as applying any security patches for the operating and other computer systems.*

*Patches to the PHA tenant software programs will no longer be applied using PC Anywhere after hours unless the Executive Director or other designated employee is present to remove PC Anywhere after the installation. Remote access by other computers other than those specifically authorized by a written agreement is prohibited. WebEX and other meeting that required shared use of computers will only be allowed for contractors who have executed a confidentiality agreement that is current and is on file. Written permission to access EIV data will have to be given to contractors on a case-by- case basis only. Violations of the requirement will result in reporting of a security breach and prosecution under the Privacy Act. Access to EIV data on the computer will be restricted to authorized users of the EIV date. Backup of tenant data will be recorded on DVD and or CD Rom and will be protected and stored in a Fireproof File Cabinet.*

*Computer repair service personnel and companies will be required to provide the following:*

- 1. A confidentiality agreement*
- 2. A guarantee that the data stored on any hard drives and other recording media will be destroyed by wiping the drive with a magnet after deleting the information or other program such as Clean Sweep or other programs that erase computer data so that it cannot be retrieved.*

*Users will retrieve computer printouts as soon as they are generated so the EIV data is not left lying unattended in printers where unauthorized users may access them.*

*Authorized users of EIV data are directed to avoid leaving EIV data displayed on their computer screens where unauthorized users may view it. A computer will never be left unattended with EIV data displayed on the screen. If an authorized user is in EIV data and an unauthorized user approaches the work area, the authorized user will lessen the chance of inadvertent disclosure of EIV data by minimizing or closing out the screen on which the EIV data is being displayed.*

*User Accounts: User accounts for EIV system will be provided on a need-to-know basis, with appropriate approval and authorization. The level of access granted determines the functionalities, features, and amounts of data that a specified user can see. The PHA Access Form will be used to request additions, deletions, or modifications of user accounts with access rights to the EIV system.*

*All PHA employees and contractors who access any EIV system will have a current signed User Agreement on file.*

*Users will maintain the security of the User Accounts by not disclosing their passwords to other staff members and not sharing user accounts with other*

*employees or contractors. Users will not, deliberately or inadvertently, override the authorized access levels by providing EIV data to others who have limited or no access to the data.*

*At no time will any EIV system be accessed to provide information that does not relate to a tenant.*

### ***DISPOSAL OF EIV INFORMATION***

*All EIV data from SSA will be retained in the tenant's file for the duration of tenancy, plus three years from the end of participation date. All EIV printouts containing Nation Directory of New Hires (NDNH) data (employment, wage and unemployment information) will be retained in the tenant's file for the duration of tenancy, plus three years from the end of participation date. All EIV originals and any documents created in association with their use will be either burned or shredded. Data that is stored on media other than paper will be burned after the 3 year required period for storage has elapsed. Paper data storage will be shredded or burned after appropriate data storage has expired.*

*Burning Precautions: The EIV material may be burned in an incinerator that produces enough*

*heat to burn material and to ensure that all of the material is consumed.*

*Shredding Precautions: To make reconstruction more difficult, the EIV data will be shredded using a crosscut micro cut shredder. It is important that a log or register be maintained of all documents that have been burned or shredded.*

## **SECURITY AWARENESS TRAINING**

*Security awareness training is a crucial aspect of ensuring the security of the EIV system and data. Users and potential users will be made aware of the importance of respecting the privacy of data, following established procedures to maintain privacy and security, and notifying management in the event of a security or privacy violation.*

*Before granting PHA employees and contractors access to EIV information, each employee and contractor must be given a copy of the EIV security policies and procedures. Additionally, all employees having access to EIV data will be briefed at least annually on the PHA 's security policy and procedures that require their awareness and compliance. The PHA EIV Coordinator will keep a record of the Security Training for all users.*

*On completion of security awareness training the PHA will make sure that employees or contractors who access the EIV data have completed a PHA User Agreement or a PHA Contractor Agreement indicating that they are aware of the safeguards and responsibilities associated with using the system. PHA employees will be advised of the penalties associated with the provisions of the Privacy Act of 1974, Section 553 (a), which make unauthorized disclosure or misuse of tenant wage data a crime punishable by a fine of up to \$5,000.00. (See Section 1.2 Privacy Act Considerations and Appendix 2. Criminal Penalties Associated with the Privacy Act.)*

*The PHA EIV Coordinator may communicate security information and requirements to appropriate personnel using a variety of methods outside of the formal training and awareness sessions. These methods may include:*

*Discussions at group and managerial meetings; and Security bulletins posted throughout the work area.*

## **PASSWORDS AND PASSWORD CHANGES:**

*The HUD Secure System, in which EIV is in, requires frequent changes in passwords; these passwords will be recorded and stored in a secure location.*

*It will be required that any password granted to an employee or authorized user will be revoked prior to termination of that employee or user to ensure data safety.*

*The Chairman of the Board will have the authority to change the password of any employee of the agency including the Executive Director and/or ISM personnel prior to termination. Otherwise, the power to change passwords will reside with the Executive Director.*

## **RECORD KEEPING AND REPORTING REQUIREMENTS**

*Recognition, reporting, and disciplinary action in response to security violations are crucial to successfully maintaining the security and privacy of the EIV System. These security violations may include the disclosure of private data as well as attempts to access unauthorized data and the sharing of User ID's and passwords. Upon the discovery of a possible improper disclosure of EIV information or another security violation by a PHA employee or any other person, the individual making the observation or receiving the information will contact the PHA's EIV Coordinator and/or the Field Office's Director of Public Housing or Director of Multifamily Housing. The PHA Executive Director or designated staff will document all improper disclosures in writing providing details including who was involved, what was disclosed, how the disclosure occurred, and where and when it occurred.*

### **WHEN EIV INCOME VERIFICATION REPORTS WILL BE ACCESSED:**

*EIV Income Reports will be accessed within two to three months of all Annual Recertification's effective dates in case there is an Income Discrepancy that has to be addressed. The PHA will print, review, and utilize the Summary Report, the Income Discrepancy Report, the New Hires Report, and the Income Report for all annual and interim recertifications and the Debts Owed Reports. Copies of all Reports must be maintained in the tenant file. (Note: Once a Summary Report is placed in the tenant file during recertification that shows an Identity Verification of "Verified" for all household members required to have a Social Security Number, the property does not have to continue to print the Summary Report at recertification unless there is a change in household composition or in a household member's identity verification status.) There must be a valid copy of the HUD-9886. The forms must be signed by each household member who is at least 18 years of age, and each family head, spouse, and co-head regardless of age, in order to view the data contained in EIV. When a resident turns 18, PHA will send them the HUD-9886A and the HUD 52675 form to be signed and returned to the office within 30 days. If applicable, an interim adjustment will be completed. If the tenant fails to sign the consent form(s), the household is in non-compliance with their lease and assistance to, and the tenancy of, the household may be terminated (24 CFR 5.232).*

*The PHA may not suspend, terminate, reduce, make a final denial of rental assistance or take any other adverse action against an individual based on the data in EIV. When the employment and income date in EIV is not the same as reported by the tenant, or when the tenant disputes the EIV data, PHA's must independently verify any information by obtaining third party verification directly from the employer or by having the tenant request a current Award Letter for SSA.*

*The PHA must notify the tenant of the results of the third party verification and request the tenant come into the office to discuss the results.*

*If the PHA determines that the tenant had unreported or underreported income, he/she must go back to the point in time the unreported or underreported income started and calculate the amount the tenant owes. A record of this calculation will be provided to the tenant and retained in the tenant's file. The PHA must have the 50058 or HUD 50059 (for MF properties) on file that*

*was in effect during the period(s) that the tenant had unreported or underreported income, along with any supporting documentation, in order to calculate the amount the tenant owes. If the PHA does not have this historical information, he/she cannot go back to the tenant for unreported or underreported income.*

**REPAYMENT AGREEMENTS:**

*Tenants are obligated to reimburse the owner if they are charged a rent less than required by HUD/s rent formula due to not reporting or underreporting income. The tenant is required to reimburse the owner for the difference between the rent he/she should have paid and the rent he/she was charged.*

*a. If the tenant is unable to pay the amount due, the owner should enter into a repayment agreement with the tenant to collect the funds over a specific period of time. The repayment amount will be renegotiated if the household income increases or decreases by \$200 or more per month. Tenants are not required to reimburse the owner for undercharges caused solely by the owner's failure to follow HUD' s procedures for computing rent or assistance payments.*

*b. If the PHA finds that the tenant is in non-compliance with his/her lease because he/she knowingly provided incomplete or inaccurate information, the PHA must follow the guidance for terminating the tenant/s tenancy and file for a civil action against the tenant to recover improper subsidy payments. Where fraud is suspected, the PHA should report this to the HUD OIG Office of Investigation in the District that has jurisdiction in the state the project is located.*

**WHEN EIV IDENTITY VERIFICATION REPORTS WILL BE ACCESSED:**

*This report identifies household members who failed the SSA identity match due to invalid personal identifiers - incorrect SSN, DOB, or last name, as well as identifies deceased household members. EIV Identity Verification Reports will be run monthly. The PHA will need to confirm with the affected tenant that his/her SSN, DOB, and/or last name are correct in PIC. The PHA should have third-party verification or documentation to support the tenant's personal identifiers and the accuracy of the PIC data. PHA must correct any incorrect information that may be in the PIC system. If the information in PIC is accurate, the PHA will encourage the tenant to contact the SSA to correct any inaccurate data in their databases. Only the tenant can cause a correction in the SSA system.*

**WHEN EXISTING TENANT SEARCH FUNCTION FOR APPLICANTS WILL BE ACCESSED:**

*When an applicant is being processed for move-in, the Existing Tenant Search function will be accessed before move-in to determine if any applicant is currently residing at another Multifamily Housing or Public and Indian Housing location and receiving rental assistance. If the applicant is residing at another location, the PHA should discuss this with the applicant, giving the applicant the opportunity to explain any circumstances relative to his/her being assisted at another location. This may be a case where the applicant wants to move from their existing*

location. The PHA should also follow up with the respective PHA to confirm the individual's program participation status before admission. The report gives the PHA the ability to coordinate move-out and move-in dates with the PHA of the property at the other location.

**WHEN THE IMMIGRATION REPORT WILL BE ACCESSED:**

*The Immigration Report assists PHAs with effective monitoring of PHA and tenant compliance with SSN disclosure and reporting requirements, implementation of prorated assistance for mixed families, follow-up of pending verifications of citizenship/immigration status, and follow-up for eligible citizens or non-citizens that have an assigned Alternate ID who need to disclose an SSN to the PHA. This report is required to be monitored monthly and PHAs are required to update the 50058 with any information from the Tenant, SSA, and the SAVE system.*

**WHEN DECEASED TENANT REPORT WILL BE ACCESSED:**

*The Deceased Tenant Report will be accessed quarterly. If the report identifies a current tenant, the PHA should confirm with the head-of-household, next of kin or emergency contact person whether or not the person is deceased and, if so, update the family composition on the HUD-50058 to terminate tenancy. Where the PHA finds that the tenant is not deceased, the PHA should encourage the tenant to contact the SSA to get the discrepancy resolved.*

**WHEN MULTIPLE SUBSIDY REPORT WILL BE ACCESSED:**

*The Multiple Subsidy Report will be completed quarterly. This report is to identify individuals who may be receiving multiple rental subsidies. If the report shows that a tenant is being assisted at another location, the PHA should discuss this with the tenant, giving the tenant the opportunity to explain any circumstances relative to his/her being assisted at another location. The PHA will need to follow up with the respective PHA or O/ A to confirm that the tenant is being assisted at the other location. Depending on the results of this investigation, the PHA may need to terminate the tenant's assistance or tenancy.*

**WHEN NEW HIRES REPORT WILL BE ACCESSED:** *The New Hires Report will be reviewed and acted upon quarterly. Each applicable tenant will be contacted regarding new employment. The new employment will be verified with the Tenant, and the Tenant will be requested to provide documents to support current income and/or third-party verification from his/her employer, as applicable. An interim recertification will be processed to include the new income, if applicable.*

**WHEN NO INCOME REPORT WILL BE ACCESSED:** *The No Income Report will be accessed quarterly. If the EIV Report shows No Income, but the Tenant declares that they do have a source of income, then third-party verification will be used to document the source. The Tenant's file will have a statement from the Tenant disputing the No Income Report and any correspondence/documents to verify the Tenant's statement. If the Tenant declares that they have no income, then they must complete a "Zero Income Questionnaire" form.*



***INCOME REPORT/INCOME DISCREPANCY REPORT-****This report will be done at all Annual Recertifications and Interim Certifications. If the Income Discrepancy Report indicates a discrepancy may exist, the file must contain documentation of resolution of the discrepancy, that is, documentation that supports that the discrepancy is valid or invalid. (1) The file documentation must show resolution of the discrepancy at the time of the recertification, or within 30 days of the date on the Income Report. (2) If the discrepancy is determined to be valid, the file must include a copy of the corrected 50058's correcting the error, dating back to the time the unreported or underreported income started, not to exceed 5 years.*

***HUD 52675 DEBTS OWED AND TERMINATIONS:***

*Prior to admission to the program, the PHA must search for each adult family member in the EIV Debts Owed to PHAs and Terminations database. All adult household members must sign the form HUD-52675 once at admission. The form provides notification to adult household members that debt and terminations information will be collected, shared with other PHAs and will be accessible by HUD staff, PHA staff, and contractors to determine suitability for rental assistance. The Debts Owed to PHAs & Termination Report may be generated in EIV as a standalone report; the information from the report also is contained in the Income Report for each household.*

*If any information on debts or terminations is returned by the search, the PHA will determine if the offenses violate their respective admissions policies. The family has a right to request and obtain a copy of the report from the PHA and dispute the reported information, providing any supporting documentation. To ensure the availability of records, disputes of the original debt or termination information must be made within three years from the end of participation date, unless a reasonable accommodation to this policy is made; otherwise, the debt and termination information will be presumed correct.*

*Only the PHA who reported the adverse information can delete or correct the record. The PHA has 30 days from receipt of the written dispute to provide notification of its action—either to update or delete the record if the PHA determines the information is incorrect or to provide an explanation as to why the information is correct.*

***INCOME REPORT- 90 DAYS AFTER MOVE-IN:*** *This report will be run no more than 90 days after a move-in certification is submitted to PIC or TRACS. In case of an income discrepancy, it will be handled as stated in paragraph #12 above.*

***MASTER FILE:*** *A "Master File" that contains a copy of the following reports printed, reviewed, and resolved in accordance with the property's EIV Policies and Procedures: New Hires Summary Report, Identity Verification Reports (Failed EIV Pre-Screening Report and Failed Verification Report), Multiple Subsidy Summary Report and Deceased Tenants Report and Debts Owed. These Reports will be retained for three years.*

***IDENTITY THEFT: HOW IDENTITY THEFT WILL BE INVESTIGATED/ ADDRESSED:***

*Documentation for Identity Theft*

*When tenant disputes data, the tenant should indicate in writing the reason for dispute and provide supporting documentation; supporting documents for identity theft:*

- Copy of police report (not a police report number); or*
- Notice from credit bureau regarding fraud alert placed on credit report or copy of credit report with fraud alert notice; or*
- Copy of identity theft report filing with the Federal Trade Commission; and*
- Copy of tenant's letter sent to the employer to dispute information and request for correction; and*
- Any correspondence the tenant received from the employer*

*. If tenant believes that he/she is the victim of identity theft, the tenant should take the following three steps as soon as possible, and keep a record with the details of conversations and copies of all correspondence.*

*1. File a report with the local police or the police in the community where the identity theft took place. Then, get a copy of the police report. The tenant should provide the PHA with a copy of the report. If the police are reluctant to make a report, the tenant may ask to file a "Miscellaneous Incidents" report or try another jurisdiction, such as the state police*

*2. The tenant should place a fraud alert on his/her credit reports, and review your credit reports*  
*-Fraud alerts can help prevent an identity thief from opening any more accounts in the tenant's name. Contact the toll-free fraud number of any of the three consumer reporting companies below to place a fraud alert on your credit report. You only need to contact one of the three companies to place an alert. The company you call is required to contact the other two, which will place an alert on their versions of your report, to:*

*-Equifax: 1-800-525-6285; [www.equifax.com](http://www.equifax.com); P.O. Box 740241, Atlanta, GA 30374- 0241*

*- Experian: 1-888-EXPERIAN (397-3742); [www.experian.com](http://www.experian.com); P.O. Box 9532, Allen, TX 75013*

*-TransUnion: 1-800-680-7289; [www.transunion.com](http://www.transunion.com); Fraud Victim Assistance Division, P.O. Box 6790, Fullerton, CA 92834-6790*

*3. File a complaint with the Federal Trade Commission.*

*-By sharing your identity theft complaint with the FTC, you will provide important information that can help law enforcement officials across the nation track down identity thieves and stop them. The FTC can refer victims' complaints to other government agencies and companies for*

*further action, as well as investigate companies for violations of laws the agency enforces.*

*-You can file a complaint with the FTC using the online complaint form at [https://rn.ftc.gov/pls/dod/widtpubl\\$.sta rtup?Z ORG CODE=PU03](https://rn.ftc.gov/pls/dod/widtpubl$.sta rtup?Z ORG CODE=PU03) or call the FTC's Identity Theft Hotline, toll-free: 1-877-ID-THEFT (438-4338); TTY: 1-866-653-4261; or write Identity Theft Clearinghouse, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580*

*-Be sure to call the Hotline to update your complaint if you have any additional information or problems*

*Resource: Federal Trade Commission -[www.ftc.gov](http://www.ftc.gov)*

*Documentation for Employer Reporting Error*

*When the tenant disputes data, the tenant should provide documentation to support the claim of incorrect data, such as:*

*Copy of tenant's letter sent to the employer to dispute information and request for correction.*

*Any correspondence the tenant received from the employer.*



#### 4. ASSETS

##### *Restriction on assistance to families based on assets*

*(a) Restrictions based on net assets and property ownership. (1) A dwelling unit in the public housing program may not be rented, and assistance under the Section 8 (tenant-based and project based) programs may not be provided, either initially or upon reexamination of family income, to any family if*

*(b)*

*(i) The family's net assets (as defined in § 5.603) exceed \$100,000, which amount will be adjusted annually by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, or*

*(ii) The family has a present ownership interest in, a legal right to reside in, and the effective legal authority to sell, based on State or local laws of the jurisdiction where the property is located, real property that is suitable for occupancy by the family as a residence, except this real property restriction does not apply to:*

*(A) Any property for which the family is receiving assistance under 24 CFR 982.620; or under the Homeownership Option in 24 CFR part 982;*

*(B) Any property that is jointly owned by a member of the family and at least one non-household member who does not live with the family, if the non-household member resides at the jointly owned property;*

*(C) Any person who is a victim of domestic violence, dating violence, sexual assault, or stalking, as defined in this part 5 (subpart L); or*

*(D) Any family that is offering such property for sale.*

*(2) A property will be considered "suitable for occupancy" under paragraph (a)(1)(ii) of this section unless the family demonstrates that it*

*(i) Does not meet the disability-related needs for all members of the family (e.g., physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);*

*(ii) Is not sufficient for the size of the family;*

*(iii) Is geographically located so as to be a hardship for the family (e.g., the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the PHA or owner);*

*(iv) Is not safe to reside in because of the physical condition of the property (e.g., property's physical condition poses a risk to the*

family's health and safety and the condition of the property cannot be easily remedied); or  
(v) Is not a property that a family may reside in under the State or local laws of the jurisdiction where the property is located

(b) *Acceptable documentation; confidentiality.* (1) A PHA or owner may determine the net assets of a family based on a certification by the family that the net family assets (as defined in § 5.603) do not exceed \$50,000, which amount will be adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, without taking additional steps to verify the accuracy of the declaration. The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.

(2) A PHA or owner may determine compliance with paragraph (a)(1)(ii) of this section based on a certification by a family that certifies that such family does not have any present ownership interest in any real property at the time of the income determination or review.

(3) When a family asks for or about an exception to the real property restriction because a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the PHA or owner must comply with the confidentiality requirements under § 5.2007. The PHA or owner must accept a self-certification from the family member, and the restrictions on requesting documentation under § 5.2007 apply.

(c) *Enforcement.* (1) When recertifying the income of a family that is subject to the restrictions in paragraph (a) of this section, a PHA or owner may choose not to enforce such restrictions, or alternatively, may establish exceptions to the restrictions based on eligibility criteria.

(2) The PHA or owner may choose not to enforce the restrictions in paragraph (a) of this section or establish exceptions to such restrictions only pursuant to a policy adopted by the PHA or owner.

(3) Eligibility criteria for establishing exceptions may provide for separate treatment based on family type and may be based on different factors, such as age, disability, income, the ability of the family to find suitable alternative housing, and whether supportive services are being provided. Such policies must be in conformance with all applicable fair housing statutes and regulations, as discussed in this 24 CFR part 5.

(d) *Delay of eviction or termination of assistance.* The PHA or owner may delay for a period of not more than 6 months the initiation of eviction or termination proceedings of a family based on noncompliance under this provision unless it conflicts with other provisions of law.

(e) *Applicability.* This section applies to the Section 8 (tenant-based and project-based) and public housing programs.

**According to PHH NOTICE 2023-27 THESE SECTIONS ARE SUSPENDED UNTIL FURTHER NOTIFICATION**

Net family assets are the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

(2) In determining net family assets, PHAs or owners, as applicable, must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

(3) Excluded from the calculation of net family assets are:

(i) The value of necessary items of personal property.

(ii) The combined value of all non-necessary items of personal property if the combined total value does not exceed \$50,000 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers).

(iii) The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals.

(iv) The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located.

(v) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability.

(vi) The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any "baby bond" account created, authorized, or funded by Federal, State, or local government.

(vii) Interests in Indian trust land.

(viii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982.

(ix) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982.

(x) Family Self-Sufficiency Accounts.

and

(xi) Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

(4) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the trust fund is not a family asset and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.

#### **Imputed Income**

Imputed income from assets is no longer determined based on the greater of actual or imputed income from the assets. Instead, imputed asset income must be calculated for specific assets when three conditions are met:

- The value of net family assets exceeds \$50,000 (as adjusted for inflation);
- The specific asset is included in net family assets; and
- Actual asset income cannot be calculated for the specific asset.

If the actual income from assets can be computed for some assets but not all assets, then PHAs must add up the actual income from the assets, where actual income can be calculated, then calculate the imputed income for the assets where actual income could not be calculated. After the PHA has calculated both the actual income and imputed income, the housing provider must combine both amounts to account for income on net family assets with a combined value of over \$50,000.

When the family's net family assets do not exceed \$50,000 (as adjusted for inflation), imputed income is not calculated. Imputed asset income is never calculated on assets that are excluded from net family assets. When actual income for an asset — which can equal \$0 — can be calculated, imputed income is not calculated for that asset.

#### **PASSBOOK SAVINGS RATE**

For 2024, the passbook rate will be 0.40 percent.





# Income Estimation Tool

Keep this page for your records. Use the estimates below to determine if you may qualify for an interim recertification (reexamination) to adjust your monthly payment.

Recertification date:

(month/year)

Family's annual income:

If your family qualifies as an elderly or disabled family and has unreimbursed health, medical, or disability assistance expenses of more than  a year (10% of your annual income) you may qualify for an income deduction. This deduction may reduce your monthly payment.

If your family qualifies for a hardship exemption and has unreimbursed health, medical, or disability assistance expenses of more than  a year (5% of your annual income) you may qualify for an income deduction. This deduction may reduce your monthly payment.

Family's adjusted annual income

If your family's adjusted annual income is anticipated to increase by this amount or more, for the 12 months following your recertification you may be required to report the change to your rental office. Your monthly payment may then be adjusted.

**\$ 0.00**

If your family's adjusted annual income is anticipated to decrease by at least this amount for the 12 months following your annual examination, you may report this to the rental office and an interim recertification may lower your monthly payments. (This amount is based on a calculation of **10%** of your adjusted annual income.)

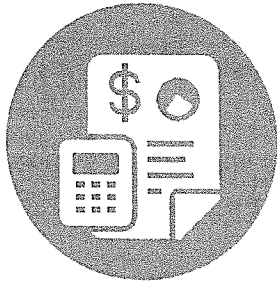
**\$ 0.00**

**Note: This is only an estimate.**

Call or visit the office if you think your rent may need to be adjusted.

The content of this document, except when based on statutory or regulatory authority or law, does not have the force and effect of law, and is not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

For more information, contact:



# Income Estimation Tool

## Definitions

**Regular Recertification (Reexamination)** — Public Housing Authorities (PHAs), owners, or agents that participate in certain HUD programs must conduct a recertification (sometimes called a reexamination) of family income and composition regularly. Generally, recertifications for families in Public Housing paying income-based rent, Housing Choice Voucher, and applicable Multifamily programs must be conducted at least annually. The family must supply certain information. The PHA, owner, or agent will then calculate monthly payments, including any portion the family must pay and any housing assistance payments made to an owner.

**Interim Recertification**—Families *must* report income in accordance with established policy. PHAs and/or Owners/Agents must conduct an interim recertification when the applicable reported income or deductions change by an amount estimated to result in an increase of 10% or more in annual adjusted income. The PHA may not consider an increase in the family's earned income when estimating or calculating whether their adjusted income has increased, unless the family received an interim reduction during the certification period. A family may request an interim recertification for changes that result in an estimated decrease of 10% or more (or a lesser amount as established by PHA, owner, or agent policy) of their adjusted annual income. It is always best to check with the PHA when your income or deductions change. Examples of changes include:

- *Changes in income including, but not limited to:*
  - » loss of employment
  - » reduction in number of hours worked
  - » obtaining new public benefits, such as TANF
- *Increases in allowed deductions including, but not limited to:*
  - » increased medical expenses
  - » higher or lower child care costs

- *Other changes including, but not limited to:*

- » changes to the household, such as having a new member move in or someone move out
- » becoming a full-time student or ending that status (for example, when someone graduates)
- » becoming a person with a disability

**Family's Annual Income** is the total family income before any deductions. It may include wages, net business income, unemployment, welfare assistance, social security, and more. The total is calculated by the PHA, owner, or agent, who will clarify the dates of the year-long period.

**Adjusted Annual Income** is the household income after all **Mandatory** and applicable **Permissive Deductions** are applied.

**Mandatory Deductions** include but are not limited to:

- \$480 for each dependent (as of 2023; this amount will be adjusted with inflation);
- \$525 for any elderly family or disabled family (as of 2023; this amount will be adjusted with inflation);
- Eligible, unreimbursed medical expenses of any qualifying elderly or disabled family that exceed 10% of annual income;
- Eligible unreimbursed disability assistance (reasonable attendant care and auxiliary apparatus) expenses for caring for family members with a disability when the expenses allow a family member to be employed
- Reasonable childcare expenses necessary to enable a member of the family to be employed or further their education.

## **REEXAMINATIONS**

At least annually, the PHA will conduct a reexamination of family income and circumstances. The results of the reexamination determine (1) the rent the family will pay, and (2) whether the family is housed in the correct unit size.

### **GENERAL**

*The PHA will send a notification letter to the family letting them know that it is time for their annual reexamination, giving them the option of selecting either the flat rent or income method, and scheduling an appointment if they are currently paying an income rent. If the family thinks they may want to switch from a flat rent to an income rent, they should request an appointment. At the appointment, the family can make their final decision regarding which rent method they will choose. The letter also includes, for those families paying the income method, forms for the family to complete in preparation for the interview. The letter includes instructions permitting the family to reschedule the interview if necessary. The letter tells families who may need to make alternate arrangements due to a disability that they may contact staff to request an accommodation of their needs.*

*During the appointment, the PHA will determine whether family composition may require a transfer to a different bedroom size unit, and if so, the family's name will be placed on the transfer list.*

*Also, during the recertification, each household shall be asked whether any member is subject to the lifetime registration requirement under a state registration program. The Housing Authority will verify this information using the Dru Sjodin National Sex Offender Database and document this information in the same method used at admission. For any admissions after June 25, 2001 (the effective date of the Screening and Eviction for Drug Abuse and Other Criminal Activity final rule), if the recertification screening reveals that the tenant or a member of the tenant's household is subject to a lifetime sex offender registration requirement, or that the tenant has falsified information or otherwise failed to disclose his or her criminal history on their application and/or recertification forms, the Housing Authority will pursue eviction of the household.*

*If a family is about to be evicted from housing based on either the criminal check or the sex offender registration program, the applicant will be informed of this fact and given an opportunity to dispute the accuracy of the information before the eviction occurs.*

### **MISSED APPOINTMENTS**

*If the family fails to respond to the letter and fails to attend the interview, a second letter will be mailed. The second letter will advise of a new time and date for the interview, allowing for the same considerations for rescheduling and accommodation as above. The letter will also advise that failure by the family to attend the second scheduled interview will result in the PHA taking eviction actions against the family.*

**Rent options -**

*(1) **Annual choice by family.** Once a year, PHA must give each family the opportunity to choose between the two methods for determining the amount of tenant rent payable monthly by the family. The family may choose to pay as tenant rent either a flat rent as determined in accordance with paragraph (b) of this section, or an income-based rent as determined in accordance with paragraph (c) of this section. Except for financial hardship cases as provided in paragraph (d) of this section, the family may not be offered this choice more than once a year.*

*(2) **Relation to minimum rent.** Regardless of whether the family chooses to pay a flat rent or income-based rent, the family must pay at least the minimum rent as determined in accordance with § 5.630 of this title.*

*(a) **Flat rent .** The flat rent is determined annually, based on the market rental value of the unit as determined by this paragraph (b).*

*(1) The PHA must establish a flat rent for each public housing unit that is no less than 80 percent of the applicable Fair Market Rent (FMR) as determined under 24 CFR part 888, subpart A; or*

*(2) HUD may permit a flat rent of no less than 80 percent of an applicable small area FMR (SAFMR) or unadjusted rent, if applicable, as determined by HUD, or any successor determination, that more accurately reflects local market conditions and is based on an applicable market area that is geographically smaller than the applicable market area used in paragraph (b)(1) of this section. If HUD has not determined an applicable SAFMR or unadjusted rent, the PHA must rely on the applicable FMR under paragraph (b)(1) or may apply for an exception flat rent under paragraph (b)(3).*

*(3) The PHA may request, and HUD may approve, on a case-by-case basis, a flat rent that is lower than the amounts in paragraphs (b)(1) and (2) of this section, subject to the following requirements:*

*(i) The PHA must submit a market analysis of the applicable market.*

*(ii) The PHA must demonstrate, based on the market analysis, that the proposed flat rent is a reasonable rent in comparison to rent for other comparable unassisted units, based on the location, quality, size, unit type, and age of the public housing unit and any amenities, housing services, maintenance, and utilities to be provided by the PHA in accordance with the lease.*

*(iii) All requests for exception flat rents under this paragraph (b)(3) must be submitted to HUD.*

*(4) For units where utilities are tenant-paid, the PHA must adjust the flat rent downward by the amount of a utility allowance for which the family might otherwise be eligible under 24 CFR part 965, subpart E.*

(5) *The PHA must revise, if necessary, the flat rent amount for a unit no later than 90 days after HUD issues new FMRs.*

(6) *If a new flat rent would cause a family's rent to increase by more than 35 percent, the family's rent increase must be phased in at 35 percent annually until such time that the family chooses to pay the income-based rent or the family is paying the flat rent established pursuant to this paragraph.*

7. *Flat rent reexaminations for families income will occur every 3 years for a family that chooses the flat rent option. The PHA will not apply the 3 year reexamination provision to families that are over income.*

**(b) Income-based rent.**

(1) *An income-based rent is a tenant rent that is based on the family's income and the PHA's policies for determination of such rents.*

(2) *The PHA rent policies may specify that the PHA will use percentage of family income or some other reasonable system to determine income-based rents. The PHA rent policies may provide for depositing a portion of tenant rent in an escrow or savings account, for imposing a ceiling on tenant rents, for adoption of permissive income deductions (see § 5.611(b) of this title), or for another reasonable system to determining the amount of income-based tenant rent.*

(3) *The income-based tenant rent must not exceed the total tenant payment (§ 5.628 of this title) for the family minus any applicable utility allowance for tenant-paid utilities. If the utility allowance exceeds the total tenant payment, the PHA shall pay such excess amount (the utility reimbursement) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family.*

(4) *The PHA may elect to establish policies regarding the frequency of utility reimbursement payments for payments made to the family.*

(i) *The PHA will have the option of making utility reimbursement payments not less than once per calendar-year quarter, for reimbursements totaling \$45 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA must reimburse the family for a prorated share of the applicable reimbursement. PHAs exercising this option must have a hardship policy in place for tenants.*

(ii) *If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier.*

(c) **Ceiling rent.** *A PHA using ceiling rents authorized and established before October 1, 1999, may continue to use ceiling rents, provided such ceiling rents are set at the level required for flat rents under this section. PHAs must follow the requirements for calculating and adjusting flat rents in paragraph (b) of this section when calculating and adjusting ceiling rents.*

*(d) Information for families. For the family to make an informed choice about its rent options, the PHA must provide sufficient information for an informed choice. Such information must include at least the following written information:*

*(1) The PHA's policies on switching type of rent in circumstances of financial hardship, and*

*(2) The dollar amounts of tenant rent for the family under each option, following the procedures in paragraph (f) of this section.*

*(e) Choice between flat and income-based rents. Families must be offered the choice between a flat rental amount and a previously calculated income-based rent according to the following:*

*(1) For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income and composition at least once every three years.*

*(2) At initial occupancy, or in any year in which a participating family is paying the income-based rent, the PHA must:*

*(i) Conduct a full examination of family income and composition, following the provisions in § 960.257;*

*(ii) Inform the family of the flat rental amount and the income-based rental amount determined by the examination of family income and composition;*

*(iii) Inform the family of the PHA's policies on switching rent types in circumstances of financial hardship; and*

*(iv) Apply the family's rent decision at the next lease renewal.*

*(3) In any year in which a family chooses the flat rent option but the PHA chooses not to conduct a full examination of family income and composition for the annual rent option under the authority of paragraph (f)(1) of this section, the PHA must:*

*(i) Use income information from the examination of family income and composition from the first annual rent option;*

*(ii) Inform the family of the updated flat rental amount and the rental amount determined by the most recent examination of family income and composition;*

*(iii) Inform the family of the PHA's policies on switching rent types in circumstances of financial hardship; and*

*(iv) Apply the family's rent decision at the next lease renewal.*

*(f) Switch from flat rent to income-based rent because of hardship.*

*(1) A family that is paying a flat rent may at any time request a switch to payment of income-based rent (before the next annual option to select the type of rent) if the family is unable to pay flat rent because of financial hardship. The PHA must adopt written policies for determining when payment of flat rent is a financial hardship for the family.*

*(2) If the PHA determines that the family is unable to pay the flat rent because of financial hardship, the PHA must immediately allow the requested switch to income-based rent. The PHA shall make the determination within a reasonable time after the family request.*

*(3) The PHA policies for determining when payment of flat rent is a financial hardship must provide that financial hardship include the following situations:*

*(i) The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance;*

*(ii) The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items; and*

*(iii) Such other situations determined by the PHA to be appropriate.*

### **INTERIM REEXAMINATIONS**

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

*Families are required to report the following changes to the PHA between regular reexaminations. If the family's rent is being determined under the income method, these changes will trigger an interim reexamination. The family shall report these changes within ten (10) calendar days of their occurrence.*

*A. A member has been added to the family through birth or adoption or court-awarded custody.*

*B. A household member is leaving or has left the family unit.*

*In order to add a household member other than through birth, adoption, or court-awarded custody, the family must request that the new member be added to the lease. Before adding the new member to the lease, the individual must complete an application form stating their income, assets, and all other information required of an applicant. The individual must provide their Social Security number and must verify their citizenship/eligible immigrant status. (Their housing will not be delayed due to delays in verifying eligible immigrant status other than delays caused by the family.) The new family member will go through the screening process similar to the process for applicants. The PHA will determine the eligibility of the individual before adding them to the lease. If the individual is found to be ineligible or does not pass the screening criteria, they will be advised in writing and given the opportunity for an informal review. If they are found to be eligible and do*

*pass the screening criteria, their name will be added to the lease. At the same time, if the family's rent is being determined under the income method, the family's annual income will be recalculated taking into account the circumstances of the new family member. The effective date of the new rent will be in accordance with Section 15.8.*

*A resident requesting a live-in-aide will be required to provide verification of the need for a live-in-aide. In addition, before approval of the live-in-aide, the individual (live-in-aide) must complete an application form for purposes of determining citizenship/eligible immigrant status and the live-in-aide will go through the screening process similar to the process for applicants. The PHA will determine the eligibility of the live-in-aide before approval can be granted. If the individual is found to be ineligible or does not pass the screening criteria, the resident will be advised in writing and given the opportunity for an informal review. Under no circumstances will the live-in-aide be added to the lease or be considered the last remaining member of a tenant family.*

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

*NPHOI families are not subject to income reexaminations. Unless there is a financial hardship or other hardship as indicated above.*

### ***SPECIAL REEXAMINATIONS***

*If a family's income is too unstable to project for twelve (12) months, including families that temporarily have no income (0 renters) or have a temporary decrease in income, the PHA may schedule special reexaminations every thirty (30) calendar days, not to exceed ninety (90) calendar days until the income stabilizes and an annual income can be determined. (PLEASE REMEMBER THAT NO ONE HAS ZERO INCOME, MANY TIMES FAMILIES HAVE INCOME FOR THE PURCHASE OF PERSONAL NEEDS NOT COVERED BY FOOD STAMPS, CLOTHING, UTILITIES, ETC. A GOOD INTERVIEW COVERS THESE ITEMS AND DETERMINES RENT BASED OFF OF THE INCOME COVERED IN THE INTERVIEW, for example: My Boyfriend gives me money every month for diapers, clothes, my hair, nails, car insurance, and my mother gives me money every month for my clothes, cell phone, and my car payment, since these items are "provided monthly" they are not a gift and become "income.")*

### ***EFFECTIVE DATE OF RENT CHANGES DUE TO INTERIM OR SPECIAL REEXAMINATIONS***

*Unless there is a delay in reexamination processing caused by the family, any rent increase will be effective the first of the second month after the month in which the family receives notice of the new rent amount. If the family causes a delay, then the rent increase will be effective on the date it would have been effective had the process not been delayed (even if this means a retroactive increase).*



*If the new rent is a reduction and any delay is beyond the control of the family, the reduction will be effective the first of the month after the interim reexamination should have been completed.*

*If the new rent is a reduction and the family caused the delay or did not report the change in a timely manner, the change will be effective the first of the month after the rent amount is determined.*

#### **HOUSING AUTHORITY MISTAKES IN CALCULATING RENT**

*If the PHA makes a mistake in calculating a resident's rent contribution and overcharges the resident, the resident shall receive a refund for the amount of the mistake going back a maximum of 24 months. The refund shall be given to the resident as soon as practical or credited to the resident's account, whichever the resident desires unless the resident owes the Housing Authority money in which case the debt shall be offset to the degree possible before the resident chooses between the two refund methods.*

#### **MISSED APPOINTMENTS**

If the family fails to respond to the letter and fails to attend the interview, a second letter will be mailed. The second letter will advise of a new time and date for the interview, allowing for the same considerations for rescheduling and accommodation as above. The letter will also advise that failure by the family to attend the second scheduled interview will result in the PHA taking eviction actions against the family.



## **THE LEASE**

*A lease shall be entered into between the PHA and each tenant of a dwelling unit which shall contain the provisions described hereinafter.*

### **(a) Parties, dwelling unit and term.**

*(1) The lease shall state:*

*(i) The names of the PHA and the tenant;*

*(ii) The unit rented (address, apartment number, and any other information needed to identify the dwelling unit);*

*(iii) The term of the lease (lease term and renewal in accordance with paragraph (a)(2) of this section);*

*(iv) A statement of what utilities, services, and equipment are to be supplied by the PHA without additional cost, and what utilities and appliances are to be paid for by the tenant;*

*(v) The composition of the household as approved by the PHA (family members and any PHA-approved live-in aide). The family must promptly inform the PHA of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit;*

*(vi) HUD's regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply.*

### **(2) Lease term and renewal.**

*(i) The lease shall have a twelve-month term. Except as provided in paragraph (a)(2)(ii) of this section, the lease term must be automatically renewed for the same period.*

*(ii) The PHA may not renew the lease if the family has violated the requirement for resident performance of community service or participation in an economic self-sufficiency program in accordance with part 960, subpart F of this chapter.*

*(iii) At any time, the PHA may terminate the tenancy in accordance with § 966.4(l).*

**(3) Execution and modification.** *The lease must be executed by the tenant and the PHA, except for automatic renewals of a lease. The lease may be modified at any time by written agreement of the tenant and the PHA.*

### **(b) Payments due under the lease -**

#### **(1) Tenant rent.**

(i) *The tenant shall pay the amount of the monthly tenant rent determined by the PHA in accordance with HUD regulations and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.*

(ii) *The lease shall specify the initial amount of the tenant rent at the beginning of the initial lease term. The PHA shall give the tenant written notice stating any change in the amount of tenant rent, and when the change is effective.*

(2) **PHA charges.** *The lease shall provide for charges to the tenant for maintenance and repair beyond normal wear and tear and for consumption of excess utilities. The lease shall state the basis for the determination of such charges (e.g., by a posted schedule of charges for repair, amounts charged for utility consumption in excess of the allowance stated in the lease, etc.). The imposition of charges for consumption of excess utilities is permissible only if such charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances.*

(3) **Late payment penalties.** *At the option of the PHA, the lease may provide for payment of penalties for late payment.*

(4) **When charges are due.** *The lease shall provide that charges assessed under paragraph (b) (2) and (3) of this section shall not be due and collectible until two weeks after the PHA gives written notice of the charges. Such notice constitutes a notice of adverse action, and must meet the requirements governing a notice of adverse action (see § 966.4(e)(8)).*

(5) **Security deposits.** *At the option of the PHA, the lease may provide for security deposits which shall not exceed one month's rent or such reasonable fixed amount as may be required by the PHA. Provision may be made for gradual accumulation of the security deposit by the tenant. Subject to applicable laws, interest earned on security deposits may be refunded to the tenant on vacation of the dwelling unit or used for tenant services or activities. **The security deposits are: 1 BR \$80, 2 BR \$90 and 3 BR \$100.***

(c) **Redetermination of rent and family composition.** *The lease shall provide for redetermination of rent and family composition which shall include:*

(1) *The frequency of regular rental redetermination and the basis for interim redetermination.*

(2) *An agreement by the tenant to furnish such information and certifications regarding family composition and income as may be necessary for the PHA to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size.*

(3) *An agreement by the tenant to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the PHA that such a dwelling unit is available.*

(4) *When the PHA redetermines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of the PHA's schedule of Utility Allowances for families in the PHA's Public Housing Program, or determines that the tenant must transfer to*

another unit based on family composition, the PHA shall notify the tenant that the tenant may ask for an explanation stating the specific grounds of the PHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the PHA grievance procedure.

*(d) Tenant's right to use and occupancy.*

*(1) The lease shall provide that the tenant shall have the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests. The term guest is defined in 24 CFR 5.100.*

*(2) With the consent of the PHA, members of the household may engage in legal profitmaking activities in the dwelling unit, where the PHA determines that such activities are incidental to primary use of the leased unit for residence by members of the household.*

*(3)*

*(i) With the consent of the PHA, a foster child or a live-in aide may reside in the unit. The PHA may adopt reasonable policies concerning residence by a foster child or a live-in-aide, and defining the circumstances in which PHA consent will be given or denied. Under such policies, the factors considered by the PHA may include:*

*(A) Whether the addition of a new occupant may necessitate a transfer of the family to another unit, and whether such units are available.*

*(B) The PHA's obligation to make reasonable accommodation for handicapped persons.*

*(ii) Live-in aide means a person who resides with an elderly, disabled or handicapped person and who:*

*(A) Is determined to be essential to the care and well-being of the person;*

*(B) Is not obligated for the support of the person; and*

*(C) Would not be living in the unit except to provide the necessary supportive services.*

*(e) The PHA's obligations. The lease shall set forth the PHA's obligations under the lease, which shall include the following:*

*(1) To maintain the dwelling unit and the project in decent, safe, and sanitary condition;*

*(2) To comply with requirements of applicable building codes, housing codes, and HUD regulations materially affecting health and safety;*

*(3) To make necessary repairs to the dwelling unit;*

*(4) To keep project buildings, facilities, and common areas, not otherwise assigned to the tenant for maintenance and upkeep, in a clean and safe condition;*

*(5) To maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances, including elevators, supplied or required to be supplied by the PHA;*

*(6) To provide and maintain appropriate receptacles and facilities (except containers for the exclusive use of an individual tenant family) for the deposit of ashes, garbage, rubbish, and other waste removed from the dwelling unit by the tenant in accordance with paragraph (f)(7) of this section;*

*(7) To supply running water and reasonable amounts of hot water and reasonable amounts of heat at appropriate times of the year (according to local custom and usage), except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or where heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct utility connection; and*

*(8)*

*(i) To notify the tenant of the specific grounds for any proposed adverse action by the PHA. (Such adverse action includes, but is not limited to, a proposed lease termination, transfer of the tenant to another unit, or imposition of charges for maintenance and repair, or for excess consumption of utilities.)*

*(ii) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning a proposed adverse action:*

*(A) The notice of proposed adverse action shall inform the tenant of the right to request such hearing. In the case of a lease termination, a notice of lease termination, in accordance with paragraph (l)(3) of this section, shall constitute adequate notice of proposed adverse action.*

*(B) In the case of a proposed adverse action other than a proposed lease termination, the PHA shall not take the proposed action until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.*

*(9) To consider lease bifurcation, as provided in 24 CFR 5.2009, in circumstances involving domestic violence, dating violence, sexual assault, or stalking addressed in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), provided that, if a PHA chooses to bifurcate a lease, no assistance will be given for an individual who does not meet public housing eligibility and 24 CFR 5.508(h)(2) applies to submission of evidence of citizenship or eligible immigration status.*

*(f) **Tenant's obligations.** The lease shall provide that the tenant shall be obligated:*

- (1) Not to assign the lease or to sublease the dwelling unit;*
- (2) Not to provide accommodations for boarders or lodgers;*
- (3) To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose;*
- (4) To abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well-being of the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease;*
- (5) To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;*
- (6) To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition;*
- (7) To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner;*
- (8) To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators;*
- (9) To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project;*
- (10) To pay reasonable charges (other than for wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest.*
- (11) To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition;*
- (12)*
  - (i) To assure that no tenant, member of the tenant's household, or guest engages in:*
    - (A) Criminal activity.***
      - (1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents;*
      - (2) Any drug-related criminal activity on or off the premises; or*

*(B) Civil activity. For any units covered by 24 CFR part 965, subpart G, any smoking of prohibited tobacco products in restricted areas, as defined by 24 CFR 965.653(a), or in other outdoor areas that the PHA has designated as smoke-free.*

*(ii) To assure that no other person under the tenant's control engages in:*

*(A) Criminal activity.*

*(1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents;*

*(2) Any drug-related criminal activity on the premises; or*

*(B) Civil activity. For any units covered by 24 CFR part 965, subpart G, any smoking of prohibited tobacco products in restricted areas, as defined by 24 CFR 965.653(a), or in other outdoor areas that the PHA has designated as smoke-free.*

*(iii) To assure that no member of the household engages in an abuse or pattern of abuse of alcohol that affects the health, safety, or right to peaceful enjoyment of the premises by other residents.*

*(g) Tenant maintenance. The lease may provide that the tenant shall perform seasonal maintenance or other maintenance tasks, as specified in the lease, where performance of such tasks by tenants of dwellings units of a similar design and construction is customary: Provided, That such provision is included in the lease in good faith and not for the purpose of evading the obligations of the PHA. The PHA shall exempt tenants who are unable to perform such tasks because of age or disability.*

*(h) Defects hazardous to life, health, or safety. The lease shall set forth the rights and obligations of the tenant and the PHA if the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants and shall provide that:*

*(1) The tenant shall immediately notify project management of the damage;*

*(2) The PHA shall be responsible for repair of the unit within a reasonable time: Provided, That if the damage was caused by the tenant, tenant's household or guests, the reasonable cost of the repairs shall be charged to the tenant;*

*(3) The PHA shall offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time; and*

*(4) Provisions shall be made for abatement of rent in proportion to the seriousness of the damage and loss in value as a dwelling if repairs are not made in accordance with paragraph (h)(2) of this section or alternative accommodations not provided in accordance with paragraph (h)(3) of this section, except that no abatement of rent shall occur if the tenant rejects the*



*alternative accommodation or if the damage was caused by the tenant, tenant's household or guests.*

*(i) **Pre-occupancy and pre-termination inspections.** The lease shall provide that the PHA and the tenant or representative shall be obligated to inspect the dwelling unit prior to commencement of occupancy by the tenant. The PHA will furnish the tenant with a written statement of the condition of the dwelling unit, and the equipment provided with the unit. The statement shall be signed by the PHA and the tenant, and a copy of the statement shall be retained by the PHA in the tenant's folder. The PHA shall be further obligated to inspect the unit at the time the tenant vacates the unit and to furnish the tenant a statement of any charges to be made in accordance with paragraph (b)(2) of this section. Provision shall be made for the tenant's participation in the latter inspection, unless the tenant vacates without notice to the PHA.*

*(j) **Entry of dwelling unit during tenancy.** The lease shall set forth the circumstances under which the PHA may enter the dwelling unit during the tenant's possession thereof, which shall include provision that:*

*(1) The PHA shall, upon reasonable advance notification to the tenant, be permitted to enter the dwelling unit during reasonable hours for the purpose of performing routine inspections and maintenance, for making improvement or repairs, or to show the dwelling unit for re-leasing. A written statement specifying the purpose of the PHA entry delivered to the dwelling unit at least two days before such entry shall be considered reasonable advance notification;*

*(2) The PHA may enter the dwelling unit at any time without advance notification when there is reasonable cause to believe that an emergency exists; and*

*(3) If the tenant and all adult members of the household are absent from the dwelling unit at the time of entry, the PHA shall leave in the dwelling unit a written statement specifying the date, time and purpose of entry prior to leaving the dwelling unit.*

*(k) **Notice procedures.***

*(1) The lease shall provide procedures to be followed by the PHA and the tenant in giving notice one to the other which shall require that:*

*(i) Except as provided in paragraph (j) of this section, notice to a tenant shall be in writing and delivered to the tenant or to an adult member of the tenant's household residing in the dwelling or sent by prepaid first-class mail properly addressed to the tenant; and*

*(ii) Notice to the PHA shall be in writing, delivered to the project office or the PHA central office or sent by prepaid first-class mail properly addressed.*

*(2) If the tenant is visually impaired, all notices must be in an accessible format.*

*(l) **Termination of tenancy and eviction -***

*(1) **Procedures.** The lease shall state the procedures to be followed by the PHA and by the tenant to terminate the tenancy.*

*(2) **Grounds for termination of tenancy.** The PHA may terminate the tenancy only for:*

*(i) Serious or repeated violation of material terms of the lease, such as the following:*

*(A) Failure to make payments due under the lease;*

*(B) Failure to fulfill household obligations, as described in paragraph (f) of this section;*

*(ii) Being over the income limit for the program, as provided in 24 CFR 960.261.*

*(iii) Other good cause. Other good cause includes, but is not limited to, the following:*

*(A) Criminal activity or alcohol abuse as provided in paragraph (1)(5) of this section;*

*(B) Discovery after admission of facts that made the tenant ineligible;*

*(C) Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income;*

*(D) Failure of a family member to comply with service requirement provisions of part 960, subpart F, of this chapter - as grounds only for non-renewal of the lease and termination of tenancy at the end of the twelve-month lease term; and*

*(E) Failure to accept the PHA's offer of a lease revision to an existing lease: that is on a form adopted by the PHA in accordance with § 966.3; with written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect; and with the offer specifying a reasonable time limit within that period for acceptance by the family.*

*(3) **Lease termination notice.***

*(i) The PHA must give written notice of lease termination of:*

*(A) 14 days in the case of failure to pay rent;*

*(B) A reasonable period of time considering the seriousness of the situation (but not to exceed 30 days):*

*(1) If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or*

*(2) If any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or*

*(3) If any member of the household has been convicted of a felony;*

*(C) 30 days in any other case, except that if a State or local law allows a shorter notice period, such shorter period shall apply.*

*(ii) The notice of lease termination to the tenant shall state specific grounds for termination, and shall inform the tenant of the tenant's right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right (pursuant to § 966.4(m)) to examine PHA documents directly relevant to the termination or eviction. When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant's right to request a hearing in accordance with the PHA's grievance procedure.*

*(iii) A notice to vacate which is required by State or local law may be combined with, or run concurrently with, a notice of lease termination under paragraph (l)(3)(i) of this section.*

*(iv) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning the lease termination (see § 966.51(a)(1)), the tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.*

*(v) When the PHA is not required to afford the tenant the opportunity for a hearing under the PHA administrative grievance procedure for a grievance concerning the lease termination (see § 966.51(a)(2)), and the PHA has decided to exclude such grievance from the PHA grievance procedure, the notice of lease termination under paragraph (l)(3)(i) of this section shall:*

*(A) State that the tenant is not entitled to a grievance hearing on the termination.*

*(B) Specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that this eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations.*

*(C) State whether the eviction is for a criminal activity as described in § 966.51(a)(2)(i)(A) or for a drug-related criminal activity as described in § 966.51(a)(2)(i)(B).*

*(4) How tenant is evicted. The PHA may evict the tenant from the unit either:*

*(i) By bringing a court action or;*

*(ii) By bringing an administrative action if law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties. In order to evict without bringing a court action, the PHA must afford the tenant the opportunity for a pre-eviction hearing in accordance with the PHA grievance procedure.*

*(5) PHA termination of tenancy for criminal activity or alcohol abuse -*

***(i) Evicting drug criminals.***

***(A) Methamphetamine conviction.*** The PHA must immediately terminate the tenancy if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

***(B) Drug crime on or off the premises.*** The lease must provide that drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for the PHA to terminate tenancy. In addition, the lease must provide that a PHA may evict a family when the PHA determines that a household member is illegally using a drug or when the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

***(ii) Evicting other criminals.***

***(A) Threat to other residents.*** The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

***(B) Fugitive felon or parole violator.*** The PHA may terminate the tenancy if a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under Federal or State law.

***(iii) Eviction for criminal activity.***

***(A) Evidence.*** The PHA may evict the tenant by judicial action for criminal activity in accordance with this section if the PHA determines that 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.

***(B) Notice to Post Office.*** When a PHA evicts an individual or family for criminal activity, the PHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

***(iv) Use of criminal record.*** If the PHA seeks to terminate the tenancy for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant with a copy of the criminal record before a PHA grievance hearing or court trial concerning the termination of tenancy or eviction. The tenant must be given an opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial.

*(v) **Cost of obtaining criminal record.** The PHA may not pass along to the tenant the costs of a criminal records check.*

*(vi) **Evicting alcohol abusers.** The PHA must establish standards that allow termination of tenancy if the PHA determines that a household member has:*

*(A) Engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; or*

*(B) Furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.*

*(vii) **PHA action, generally.***

*(A) **Assessment under PHAS.** Under the Public Housing Assessment System (PHAS), PHAs that have adopted policies, implemented procedures and can document that they appropriately evict any public housing residents who engage in certain activity detrimental to the public housing community receive points. (See 24 CFR 902.43(a)(5).) This policy takes into account the importance of eviction of such residents to public housing communities and program integrity, and the demand for assisted housing by families who will adhere to lease responsibilities.*

*(B) **Consideration of circumstances.** In a manner consistent with such policies, procedures and practices, the PHA may consider all circumstances relevant to a particular case such as the seriousness of the offending action, the extent of participation by the leaseholder in the offending action, the effects that the eviction would have on family members not involved in the offending activity and the extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action.*

*(C) **Exclusion of culpable household member.** The PHA may require a tenant 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.*

*(D) **Consideration of rehabilitation.** In determining whether to terminate tenancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA 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. 13662). For this purpose, the PHA 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.*

*(E) **Length of period of mandatory prohibition on admission.** If a statute requires that the PHA prohibit admission of persons for a prescribed period of time after some disqualifying behavior or event, the PHA may apply that prohibition for a longer period of time.*

*(F) Nondiscrimination limitation. The PHA's eviction actions must be consistent with fair housing and equal opportunity provisions of § 5.105 of this title.*

*(m) Eviction: Right to examine PHA documents before hearing or trial. The PHA shall provide the tenant a reasonable opportunity to examine, at the tenant's request, before a PHA grievance hearing or court trial concerning a termination of tenancy or eviction, any documents, including records and regulations, which are in the possession of the PHA, and which are directly relevant to the termination of tenancy or eviction. The tenant shall be allowed to copy any such document at the tenant's expense. A notice of lease termination pursuant to § 966.4(l) (3) shall inform the tenant of the tenant's right to examine PHA documents concerning the termination of tenancy or eviction. If the PHA does not make documents available for examination upon request by the tenant (in accordance with this § 966.4(m)), the PHA may not proceed with the eviction.*

*(n) Grievance procedures.*

*(1) The lease must provide that all disputes concerning the obligations of the tenant or the PHA must (except as provided in § 966.51(a)(2)) be resolved in accordance with the PHA grievance procedures. The grievance procedures must comply with subpart B of this part.*

*(2) The lease must include a description of the PHA's policies for selecting a hearing officer.*

*(o) Provision for modifications. The lease shall provide that modification of the lease must be accomplished by a written rider to the lease executed by both parties, except for paragraph (c) of this section and § 966.5.*

*(p) Signature clause. The lease shall provide a signature clause attesting that the lease has been executed by the parties.*

## **2. INSPECTIONS**

*An authorized representative of the PHA and an adult family member will inspect the premises prior to commencement of occupancy. A written statement of the condition of the premises will be made, all equipment will be provided, and the statement will be signed by both parties with a copy retained in the PHA file and a copy given to the family member. An authorized PHA representative will inspect the premises at the time the resident vacates and will furnish a statement of any charges to be made provided the resident turns in the proper notice under State law. The resident's security deposit can be used to offset against any PHA damages to the unit.*

### **MOVE-IN INSPECTIONS**

*The PHA and an adult member of the family will inspect the unit prior to signing the lease. Both parties will sign a written statement of the condition of the unit. A copy of the signed inspection will be given to the family and the original will be placed in the tenant file.*

### **ANNUAL INSPECTIONS**

*The PHA will inspect each public housing unit annually to ensure that each unit meets the PHA's housing standards as established either by the UCPS Inspection standards or the NSPIRE standards whichever is in effect at the time. Work orders will be submitted and completed to correct any deficiencies.*

### **PREVENTATIVE MAINTENANCE INSPECTIONS**

*This is generally conducted along with the annual inspection. This inspection is intended to keep items in good repair. It checks weatherization; checks the condition of the smoke detectors, water heaters, furnaces, automatic thermostats and water temperatures; checks for leaks; and provides an opportunity to change furnace filters and provide other minor servicing that extends the life of the unit and its equipment.*

### **SPECIAL INSPECTIONS**

*A special inspection may be scheduled to enable HUD or others to inspect a sample of the housing stock maintained by the PHA in accordance with the most recent inspection standards being required by HUD at the time.*

### **HOUSEKEEPING INSPECTIONS**

*Generally, at the time of annual reexamination, or at other times as necessary, the PHA will conduct a housekeeping inspection to ensure the family is maintaining the unit in a safe and sanitary condition.*

### **NOTICE OF INSPECTION**

*For inspections defined as annual inspections, preventative maintenance inspections, special inspections, and housekeeping inspections, the PHA will give the tenant at least two (2) calendar days written notice.*

### **EMERGENCY INSPECTIONS**

*If any employee and/or agent of the PHA has reason to believe that an emergency exists within the housing unit, the unit can be entered without notice. The person(s) that enters the unit will leave a written notice to the resident that indicates the date and time the unit was entered and the reason why it was necessary to enter the unit.*

### **PRE-MOVE-OUT INSPECTIONS**

*When a tenant gives notice that they intend to move, the PHA will offer to schedule a pre-move-out inspection with the family. The inspection allows the PHA to help the family identify any problems which, if left uncorrected, could lead to vacate charges. This inspection is a courtesy to the family and has been found to be helpful both in reducing costs to the family and in enabling the PHA to ready units more quickly for the future occupants.*

### **MOVE-OUT INSPECTIONS**

*The PHA conducts the move-out inspection after the tenant vacates to assess the condition of the unit and determine responsibility for any needed repairs. When possible, the tenant is notified of the inspection and is encouraged to be present. This inspection becomes the basis for any claims that may be assessed against the security deposit.*

### **NSPIRE INSPECTIONS**

***EFFECTIVE May 11, 2023, HUD finalized the NSPIRE Inspection rule; this rule:***

*a)Scope. This subpart applies the national standards for the physical inspection of real estate standards to the following HUD programs:*

*(1) All Public Housing programs (programs for housing assisted under the U.S. Housing Act of 1937 other than section 8 of the Act);*

*(2) The Housing Choice Voucher program under section 8(o) of the U.S. Housing Act of 1937, part 982 of this title and the Project-Based Voucher program under section 8(o)(13) of the Act and the regulations at 24 CFR part 983 (referred to in this part as the HCV and PBV programs, or HCV and PBV housing);*

*(3) All project-based Section 8 programs;*

*(4) Section 202 Supportive Housing for the Elderly (Capital Advances);*

*(5) Section 811 Supportive Housing for Persons with Disabilities (Capital Advances);*



(6) Section 202 direct loan program for projects for the elderly and persons with disabilities as it existed before October 1, 1991 (including 202/8 projects and 202/162 projects); and

(7) Housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the following authorities:

(i) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 et seq.) (Rental Housing Insurance);

(ii) Section 213 of the NHA (Cooperative Housing Insurance);

(iii) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(iv) Section 221(d)(3) of the NHA (Market Interest Rate (MIR) program);

(v) Section 221(d)(3) and (5) of the NHA (Below Market Interest Rate (BMIR) program);

(vi) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(vii) Section 231 of the NHA (Housing for Elderly Persons);

(viii) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Assisted Living Facilities, Board and Care Homes);

(ix) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(x) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(xi) Section 241 of the NHA (Supplemental Loans for Multifamily Projects). (Where, however, the primary mortgage of a Section 241 property is insured or assisted by HUD under a program covered in this part, the coverage by two HUD programs does not trigger two inspections); and

(xii) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing program).

(b) *Conflicts.* The regulations in this subpart may be supplemented by the specific regulations for the HUD-assisted programs listed in paragraph (a) of this section. The program-specific regulations may address the frequency of inspections, who performs the inspections and whether alternative inspections are available given the statutory and regulatory framework for the program. When there is a conflict between the regulations of this subpart and the program-specific regulations, the program-specific regulations govern.

(c) *HUD housing.* For purposes of this subpart, the term “HUD housing” means the types of housing listed in paragraph (a) of this section.

§ 5.703

*National standards for the condition of HUD housing.*

*(a) General. To ensure that all residents live in safe, habitable dwellings, the items and components located inside the building, outside the building, and within the units of HUD housing must be functionally adequate, operable, and free of health and safety hazards. The standards under this section apply to all HUD housing. HUD housing under the HCV, PBV, and Moderate Rehabilitation programs shall be subject to these standards only for:*

*(1) The subsidized unit itself; and*

*(2) Items and components within the primary and secondary means of egress from a unit's entry door(s) to the public way, those common features related to the residential use of the building (e.g., the laundry room, community room, mail room), and the systems equipment that directly services the subsidized unit.*

*(b) Inside. Inside of HUD 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. The inside area must meet the following affirmative requirements:*

*(1) 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. The Secretary may establish additional standards through **Federal Register** notification;*

*(2) Except for housing subject to this subpart only through § 5.701(a)(6) or (7), or housing otherwise exempt from this requirement as provided elsewhere in this title, the inside area must meet or exceed the carbon monoxide detection standards set by the Secretary through **Federal Register** notification;*

*(3) For the inside area, any outlet installed within 6 feet of a water source must be ground-fault circuit interrupter (GFCI) protected;*

*(4) 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;*

*(5) The inside area must have permanently mounted light fixtures in any kitchens and each bathroom; and*

*(6) The inside area may not contain unvented space heaters that burn gas, oil, or kerosene.*

*(c) 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, car ports, fire escapes, foundations, lighting, roofs, walls, and windows. The outside area must meet the following affirmative requirements:*

*(1) For the outside area, outlets within 6 feet of a water source must be GFCI protected; and*

*(2) The outside area must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.*

*(d) 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. The unit must also meet the following affirmative requirements:*

*(1) The unit must have hot and cold running water in both the bathroom and kitchen, including an adequate source of safe drinking water in the bathroom and kitchen;*

*(2) The unit must include its own bathroom or sanitary facility that is in proper operating condition and usable in privacy. It must contain a sink, a bathtub or shower, and an interior flushable toilet;*

*3) (i) The unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, in the following locations:*

*(A) On each level of the unit;*

*(B) Inside each bedroom;*

*(C) Within 21 feet of any door to a bedroom measured along a path of travel; and*

*(D) Where a smoke detector installed outside a bedroom is separated from an adjacent living area by a door, a smoke detector must also be installed on the living area side of the door.*

*(ii) If the unit is occupied by any hearing-impaired person, the smoke detectors must have an alarm system designed for hearing-impaired persons;*

*(iii) The Secretary may establish additional standards through **Federal Register** notification;*

*(iv) Following the specifications of National Fire Protection Association Standard (NFPA) 72 satisfies the requirements of this paragraph (d)(3);*

*(4) The unit must have a living room and a kitchen area with a sink, cooking appliance, refrigerator, food preparation area, and food storage area;*

*(5) For units assisted under the HCV or PBV program, the unit must have at least one bedroom or living/sleeping room for each two persons;*

*(6) Except for units subject to this subpart only through § 5.701(a)(6) or (7), or housing otherwise exempt from this requirement as provided elsewhere in this title, the unit must meet or exceed the carbon monoxide detection standards set by HUD through **Federal Register** notification;*

*(7) The unit must have two working outlets or one working outlet and a permanent light within all habitable rooms;*

*(8) Outlets within 6 feet of a water source must be GFCI protected:*

*(9) For climate zones designated by the Secretary through notice, the unit must have a permanently installed heating source. No units may contain unvented space heaters that burn gas, oil, or kerosene;*

*(10) The unit must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically; and*

*(11) The unit must have a permanently mounted light fixture in the kitchen and each bathroom.*

*(e) Health and safety concerns —(1) General. The inside, outside and unit must be free of health and safety hazards that pose a danger to residents. Types of health and safety concerns include, but are not limited to carbon monoxide, electrical hazards, extreme temperature, flammable materials or other fire hazards, garbage and debris, handrail hazards, infestation, lead-based paint, mold, and structural soundness.*

*(2) Lead-based paint. HUD housing must comply with all requirements related to the evaluation and control of lead-based paint hazards and have available proper documentation of such ( see 24 CFR part 35). The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and the applicable regulations at 24 CFR part 35 apply.*

*(f) Compliance with State and local codes. (1) The standards for the condition of HUD housing in this section do not supersede State and local housing codes (such as fire, mechanical, plumbing, carbon monoxide, property maintenance, or residential code requirements).*

*(2) All HUD housing other than units assisted under the HCV and PBV programs must comply with State or local housing codes in order to comply with this subpart.*

*(3) State and local code compliance is not part of the determination of whether a unit passes the standards for the condition of HUD housing under this section for the HCV and PBV programs (except in accordance with § 5.705(a)(3)).*

*(g) Use of an alternative inspection or additional standard for HCV and PBV programs. A PHA is not subject to the standards set by this section when the PHA is relying on an alternative inspection in accordance with 24 CFR 982.406. PHAs may also elect to establish additional requirements for quality, architecture, or design of PBV housing, and any such additional requirements must be specified in the Agreement to enter into a HAP Contract or HAP Contract as provided in 24 CFR part 983.*

*(h) Special housing types in the HCV, PBV and Moderate Rehabilitation programs. Part 982, subpart M, of this title identifies special housing types which require standards unique to special types of housing. Unless modified by program-specific regulations, NSPIRE Standards will apply for these special housing types.*

#### § 5.705

*Inspection requirements.*

*(a) Procedures— (1) General. Any entity responsible for conducting an inspection of HUD housing to determine compliance with this subpart, must inspect and score such HUD housing in accordance with the standards and procedures for identifying safe, habitable housing set out by the Secretary and published in the **Federal Register** as described in § 5.711. The entity conducting the inspection shall identify each deficiency as “Life Threatening”, “Severe,” “Moderate”, or “Low.”*

*(2) Inspection scope. The inspection requirement for HUD housing generally requires the inside, outside and unit to be inspected, in accordance with § 5.703. The inspection requirement for the tenant-based HCV program and the unit inspection for the PBV and Moderate Rehabilitation programs only applies to units occupied or to be occupied by HCV, PBV, and Moderate Rehabilitation participants, and common areas and exterior areas which either service or are associated with such units.*

*(3) HCV and PBV variant inspection standards. (i) HUD may approve inspection criteria variations for the following purposes:*

*(A) Variations which apply standards in local housing codes or other codes adopted by the PHA;  
or*

*(B) Variations because of local climatic or geographic conditions.*

*(ii) Acceptability criteria variations may only be approved by HUD pursuant to paragraph (a)(3)(i) of this section if such variations either:*

*(A) Meet or exceed the performance requirements; or*

*(B) Significantly expand affordable housing opportunities for families assisted under the program.*

*(iii) HUD will not approve any inspection criteria variation if HUD believes that such variation is likely to adversely affect the health or safety of participant families, or severely restrict housing choice.*

*(iv) Approved variations must be added to the Administrative Plan as described in 24 CFR 982.54(d)(21).*

*(b) Entity conducting inspections. HUD housing must be inspected by the appropriate entity as described in paragraph (b)(1) of this section, except as described in paragraph (b)(2) of this section.*

*(1) General. The owner, lender, contract administrator, or HUD is the entity responsible for performing inspections of HUD housing as provided in this title, or a regulatory agreement or contract. For properties with more than one HUD-insured loan, only the first mortgage lender is required to conduct the inspection. The second mortgage lender will be provided a copy of the physical inspection report by the first mortgage lender.*

*(2) Exception. Under the HCV and PBV programs, the Public Housing Agency is responsible for inspecting HUD housing under those programs, unless another entity is assigned the inspection by the program regulations governing the housing, regulatory agreements or contracts. A PHA-owned unit receiving assistance under section 8(o) of the 1937 act must be inspected by an independent entity as specified in 24 CFR parts 982 and 983. Under the Moderate Rehabilitation program, the PHA is responsible for inspecting the HUD housing unless the PHA is managing units on which it is also administering the HAP Contract in accordance with 24 CFR 882.412, in which case HUD is responsible for the inspections in accordance with 24 CFR 882.516(d).*

*(c) Timing of inspections —(1) Generally. A property must be inspected before the property is approved for participation in any of the HUD housing programs under this part unless there is a program specific exception to this requirement. An entity responsible for conducting an inspection of HUD housing to determine compliance with this subpart must inspect such housing annually unless specified otherwise below. An inspection shall be conducted no earlier than 3 months before and no later than 3 months after the date marking the anniversary of the previous inspection, except those inspections due on or before July 1, 2024, shall be conducted no earlier than 6 months before and no later than 6 months after the date marking the anniversary of the previous inspection. HUD may approve requests by an owner or PHA for extensions of the deadline for an inspection for good cause as determined by HUD and HUD may extend inspection deadlines without owner request, as deemed necessary by the Secretary.*

*(2) Extended inspection cycle. HUD housing, except as specified below, shall be scored and ranked in accordance with the methodology provided through **Federal Register** notification.*

*(i) Standard 1 performing property. If a property receives a score of 90 points or higher on its physical condition inspection, the property will be designated a standard 1 performing property.*

*Properties designated as standard 1 performing properties will be required to undergo a physical inspection once every three (3) years.*

*(ii) Standard 2 performing property. If a property receives a score of 80 points or higher but less than 90 on its physical condition inspection, the property will be designated a standard 2 performing property. Properties designated as standard 2 performing properties will be required to undergo a physical inspection once every two (2) years.*

*(iii) Standard 3 performing property. If a property receives a score of less than 80 points, the property will be designated a standard 3 performing property. Properties designated as standard 3 performing properties will continue to undergo an annual physical inspection as currently required under covered HUD programs.*

*(3) Triennial cycle for small rural PHAs. Small rural PHAs as defined in 24 CFR 902.101 shall be assessed in accordance with part 902, subpart H of this title.*

*(4) Triennial cycle for small PHAs. Small PHAs as defined in 24 CFR 902.13(a) shall be assessed in accordance with 24 CFR 902.13(a).*

*(5) Housing choice vouchers. PHAs must inspect units subject to part 982 of this title in accordance with the frequency described in 24 CFR 982.405.*

*(6) Project based vouchers. PHAs must inspect units subject to 24 CFR part 983 in accordance with the frequency described in 24 CFR 983.103.*

*(7) FHA insured mortgages section 232 facilities. HUD may exempt assisted-living facilities, board and care facilities, and intermediate care facilities from physical inspections under this part if HUD determines that the State or local government has a reliable and adequate inspection system in place, with the results of the inspection being readily and timely available to HUD. For any other section 232 facilities, the inspection will be conducted only when and if HUD determines, on the basis of information received, such as through a complaint, site inspection, or referral by a State agency, on a case-by-case basis, that inspection of a particular facility is needed to assure protection of the residents or the adequate preservation of the project.*

*(8) Section 8 Moderate Rehabilitation program. PHAs must inspect units subject to the Moderate Rehabilitation program under 24 CFR part 882 in accordance with the frequency described in 24 CFR 882.516.*

*(d) Inspection costs. The cost of an inspection shall be the responsibility of the entity responsible for the inspection as identified in paragraph (a) of this section, except that a reasonable fee may be required of the owner of a property for a reinspection if an owner notifies the entity responsible for the inspection that a repair has been made or the allotted time for repairs has elapsed and a reinspection reveals that any deficiency cited in the previous inspection that the owner is responsible for repairing was not corrected. No fee may be passed along to the household residing in the unit or units.*

*(e) Access to property for inspection. Nothing in this subpart shall restrict the right of HUD, or an entity contracted by HUD, to inspect a property. All owners and PHAs are required to provide HUD or its representative with full and free access to all HUD-assisted properties. All owners and PHAs are required to provide HUD or its representative with access to all units and appurtenances in order to permit physical inspections, monitoring reviews, and quality assurance reviews under this part. Access to the units shall be provided whether or not the resident is home or has installed additional locks for which the owner or PHA did not obtain keys. In the event that an owner or PHA fails to provide access as required by HUD or its representative, the owner or PHA shall be given a physical condition score of zero for the project or projects involved. A score of zero for an owner or PHA shall be used to calculate the physical condition indicator score and the overall assessment score for that owner or PHA.*

*(f) Tenant involvement in inspections. HUD will establish, through notice, a procedure for tenants to recommend to HUD particular units which HUD may choose to inspect either during or separate from its standard inspection. HUD will evaluate the condition of these units and issue a report on findings, but they will not be included in the official score unless they were randomly selected independent of the tenant's recommendation. The owner or PHA is required to correct any deficiency HUD identifies within the timeframes HUD has established for the identified deficiency.*

#### § 5.707

*Uniform self-inspection requirement and report.*

*All PHAs and owners of HUD housing subject to an assistance contract, other than owners participating in the HCV, PBV, and Moderate Rehabilitation programs, are required to annually self-inspect their properties, including all units, to ensure the units are maintained in accordance with the standards in § 5.703. The owner or PHA must maintain the results of such self-inspections for three years and must provide the results to HUD upon request. This self-inspection is independent of other HUD inspections discussed in § 5.705. The owner or PHA may choose to conduct this inspection after a HUD inspection to satisfy this requirement and the post-report survey requirement at § 5.711(c)(2) simultaneously.*

#### § 5.709

*Administrative process for defining and revising inspection criteria.*

*(a) Inspection standards and scoring methodology. The Secretary will publish in the **Federal Register**, following notice and the opportunity to comment, a standards notification with a list of deficiencies and the relative severity of these deficiencies to use for inspecting HUD housing. This **Federal Register** document will also include the factors for determining if an HCV, PBV, or Moderate Rehabilitation unit passes or fails the inspection. The Secretary will also publish in the **Federal Register**, following notice and opportunity to comment, a scoring notification containing the methodologies to use for scoring and ranking HUD housing. After considering the public comments received on these **Federal Register** documents, the Secretary will publish documents announcing the new inspections standards and scoring methodologies, and the date on which these notifications become effective.*



(1) *Revisions.* The Secretary will issue a notification in the **Federal Register** published for at least 30 days of public comment making any revisions to the inspection and scoring procedures HUD deems necessary, at least once every three years, or three years after the most recent revision, whichever is later.

(2) *Emergency revisions.* The Secretary may publish a notification without 30 days of public comment in the case of an emergency to protect Federal financial resources or the health or safety of residents of HUD housing, after HUD makes a documented determination that such action is warranted due to:

(i) *A Life-Threatening deficiency or Severe deficiency and other significant risks to safety as outlined in § 5.703;*

(ii) *A new safety concern due to changing construction technology; or*

(iii) *Other events as determined by the Secretary.*

(b) *[Reserved]*

#### § 5.711

*Scoring, ranking criteria, and appeals.*

(a) *Applicability.* Administrative process for scoring and ranking the physical condition of HUD housing properties under this section does not apply to the HCV, PBV or Moderate Rehabilitation programs. PHAs administering HCV and PBV programs will be assessed under the Section 8 Management Assessment Program (“SEMAP”) or the small rural PHA assessment in accordance with 24 CFR part 985, and PHAs administering the Moderate Rehabilitation programs are subject to HUD review in accordance with 24 CFR 882.517.

(b) *Scoring and ranking of HUD housing—(1) General.* HUD's Real Estate Assessment Center (REAC), or the appropriate entity either as described in § 5.705(b), or as identified in the regulator agreement or contract for the property as described in § 5.705(b)(1), will score and rank the physical condition of HUD housing properties in accordance with the procedures set out by the Secretary in § 5.709.

(2) *Public housing programs.* PHAs operating public housing will be scored and ranked under the Public Housing Assessment System (“PHAS”) outlined in part 902 of this title.

(c) *Inspection report requirements.* (1) *Life-Threatening deficiencies and Severe deficiencies.* Upon completion of an inspection, or at the end of each day on a multiple-day inspection, REAC, or the appropriate party as described in § 5.705(b), will provide the owner or PHA or owner's representative, a notice of any items classified as Life-Threatening or Severe deficiencies. All Life-Threatening items must be corrected within 24 hours of receipt of notice of these items, unless HUD approves a variation. All Severe items must be corrected within 24 hours of receipt of notice, unless indicated otherwise within the individual inspection standards published in the **Federal Register** with notice and the opportunity for comment, or HUD approves a variation.

*The owner or PHA or owner's representative must electronically certify and provide supporting evidence within 2 business days after the deadline to correct the Life-Threatening and Severe items that the items have been resolved or sufficiently corrected such that they no longer pose a severe health or safety risk to residents of the property, or that the hazard is blocked until permanent repairs can be completed. If permanent repair will take longer than the allowable time in the relevant standard for the deficiency, the owner or PHA must provide HUD a timeframe for completing permanent repairs for HUD approval.*

*(2) Post-report inspection. The owner or PHA must carefully review the inspection report and is responsible for conducting its own survey of the total property. Moderate deficiencies must be corrected within thirty days and Low deficiencies must be corrected within sixty days, unless indicated otherwise within the individual inspection standards published in the **Federal Register** with notice and the opportunity for comment or within such other reasonable time prescribed by a HUD notice to the owner or PHA. For properties that scored at or above 60, the survey may be limited to inspecting for deficiencies based on the inspecting entity's inspection findings. For properties that scored below 60, the owner or PHA must conduct a survey of the entire project, including all units, inside areas, and outside areas, for any deficiency, and must electronically submit a copy of the results of the survey to HUD.*

*(d) Technical review of inspection results —(1) Timing. A request for a technical review of inspection results must be submitted electronically and must be received by the inspecting entity no later than the 45th calendar day following the day the inspection report is provided to the owner or PHA.*

*(2) Request for technical review. The request must be accompanied by the owner's or PHA's relevant evidence that an objectively verifiable and material error occurred or adverse conditions beyond the owner or PHA's control occurred, which if corrected will result in a significant improvement in the overall score of the property. A technical review of the inspection results will not be conducted based on conditions that were corrected subsequent to the inspection. Upon receipt of this request from the owner or PHA, the REAC will review the inspection and the evidence. If the REAC review determines that an objectively verifiable and material error (or errors) or adverse condition(s) beyond the owner's or PHA's control has been documented and that it is likely to result in a significant improvement in the property's overall score, the REAC will take one or a combination of the following actions:*

*(i) Undertake a new inspection;*

*(ii) Correct the original inspection; or*

*(iii) Issue a new physical condition score.*

*(3) Burden of proof that error or adverse conditions occurred rests with owner or PHA. The burden of proof rests with the owner or PHA to demonstrate that an objectively verifiable and material error (or errors) or adverse conditions occurred in the REAC's inspection through submission of evidence, which if corrected will result in a significant improvement in the property's overall score. The REAC will apply a rebuttable presumption that the inspection was*

*conducted accurately. To support its request for a technical review of the physical inspection results, the owner or PHA may submit photographic evidence, written material from an objective source with subject matter expertise that pertains to the item being reviewed such as a local fire marshal, building code official, registered architect, or professional engineer, or other similar evidence.*

*(4) Basis for technical review. An objectively verifiable material error must be present, or an adjustment to the score must be necessary, to allow for a technical review of inspection results. The basis for a technical review must not be due to the fault of the owner or PHA and must exhibit specific characteristics and meet specific thresholds. The applicable types of material errors and bases for adjustment are as follows.*

*(i) Building data error. A building data error occurs if the inspector inspected the wrong building or a building that was not owned by the property, including common or site areas that were not a part of the property. Incorrect data due to the failure of an owner or PHA to ensure HUD's systems of records are updated cannot form the basis of a review. Incorrect building data that does not affect the score, such as the address and building name would not be considered material.*

*(ii) Unit count error. A unit count error occurs if the total number of units considered in scoring is incorrect due to the fault of HUD. Since scoring uses total units, REAC will examine instances where the participant can provide evidence that the total units used was incorrect and that the results were not representative of the condition of the property.*

*(iii) A non-existent deficiency error. A non-existent deficiency error occurs if the inspection records an observed deficiency that does not satisfy or does not meet a reasonable interpretation of the definition of that deficiency as defined by inspection procedures.*

*(iv) Adjustments for factors not reflected or inappropriately reflected in physical condition score. HUD may determine it is appropriate to review the results of a property's physical inspection if facts and circumstances affecting the owner's or PHA's property are not reflected in the inspection or are reflected inappropriately in the inspection. The circumstances addressed in this may include inconsistencies between local code requirements and the HUD physical inspection protocol; conditions that are permitted by local variance or license or which are preexisting physical features that do not conform to, or are inconsistent with, HUD's physical condition protocol; or the project or PHA having been scored for elements ( e.g., roads, sidewalks, mail boxes, resident-owned appliances, etc.) that it does not own and is not responsible for maintaining.*

*(v) Adjustments for adverse conditions beyond the control of the owner or PHA. HUD may determine that certain deficiencies that adversely and significantly affect the physical condition score of the project were caused by circumstances beyond the control of the owner or PHA. The correction of these conditions, however, remains the responsibility of the owner or PHA. The circumstances addressed by this paragraph may include, but are not limited to, damage caused by third parties (such as a private entity or public entity undertaking work near a Public Housing project that results in damage to the project) or natural disasters.*

*(vi) Adjustments for modernization work in progress. HUD may determine that occupied dwelling units or other areas of a property, which are subject to physical inspection, and which are undergoing modernization work, require an adjustment to the physical condition score. An occupied dwelling unit or other areas of an owner's or PHA's property undergoing modernization are subject to physical inspection; the unit(s) and other areas of the property are not exempt from physical inspection. All elements of the unit or of the other areas of the owner or PHA's project that are subject to inspection and are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to HUD's physical inspection protocol without adjustment. For those elements of the unit or of the property that are undergoing modernization, deficiencies will be noted in accordance with HUD's physical inspection protocol, but the owner or PHA may request adjustment of the physical condition score as a result of current modernization or rehab work in progress.*

*(5) Significant improvement. Significant improvement in the project's overall score refers to an increase in a score for the owner or PHA such that the new score crosses an administratively significant threshold.*

*(6) Reinspection. If HUD determines that a reinspection is appropriate, it will arrange for a complete reinspection of the project(s) in question, not just the deficiencies previously identified. The reinspection will constitute the final inspection for the project, and HUD will issue a new inspection report (the final inspection report).*

*(e) Independent HUD review. Under certain circumstances, HUD may find it appropriate absent an owner or PHA request for technical review to review the results of an inspection which are anomalous or have an incorrect result due to facts and circumstances affecting the inspected property which are not reflected in the inspection or reflected inappropriately in the inspection.*

*(f) Responsibility for the cost of a new inspection. If a new inspection is undertaken by the inspecting party and the new inspection score results in a significant improvement in the property's overall score, then the entity responsible for the inspection shall bear the expense of the new inspection. If no significant improvement occurs, then the owner or PHA responsible for the property must bear the expense of the new inspection. The inspection cost of a new inspection, if paid by the owner or PHA, is not an eligible project operating expense. The new inspection score will be considered the final score.*

*(g) Issuance of final score and publication of score. (1) The score of the property is the final score if the owner or PHA files no request for technical review, as provided in paragraph (d) of this section, or for other adjustment of the physical condition score, as provided in paragraph (e) of this section. If the owner or PHA files a request for technical review or score adjustments in accordance with paragraphs (d), or there is a HUD review under paragraph (e) of this section, the final inspection score is the score issued by HUD after any adjustments are determined necessary and made by HUD at the conclusion of these processes.*

*(2) HUD will make public the final scores of the properties of the owners and PHAs through posting on HUD's internet site, or other appropriate means.*

*(h) Responsibility to notify residents of inspection; and availability of documents to residents —*  
*(1) Notification to residents. An owner or PHA must notify its residents of any planned inspections of their units or the housing development generally.*

*(2) Availability of documents for review. (i) Once a final score has been issued the owner or PHA must make the physical inspection report and all related documents available to residents during regular business hours upon reasonable request for review and copying. Related documents include the owner's or PHA's survey plan, plan of correction, certification, and related correspondence.*

*(ii) Once the owner's final inspection score is issued and published, the owner or PHA must make any additional information, such as the results of any reinspection or appeal requests, available for review and copying by its residents upon reasonable request during regular business hours.*

*(iii) The owner or PHA must maintain the documents related to the inspection of the property, as described in paragraphs (h)(2)(i) and (ii) of this section, for review by residents for a period of 60 days from the date HUD provides the inspection score for the property in which the residents reside.*

*(3) Posting on the availability of materials. The owner or PHA must post a notice to the residents in the owner's or PHA's management office and on any bulletin boards in all common areas on the date of submission to the owner of the inspection score for the property in which the resident resides that advises residents of the availability of the materials described in this section. The notice must be translated into other languages if necessary to provide meaningful access for limited English proficient (LEP) individuals. The notice should include, where applicable, the name, address, and telephone number of the HUD field office contact.*

*(4) Residents are encouraged to comment on this information provided by the owner or PHA and submit any comments directly to the applicable HUD field office or responsible entity. Should residents discover the owner or PHA provided HUD with a false certification during the review, they are encouraged to notify the applicable HUD field office where appropriate inquiry and action will be taken.*

*(i) Administrative review of properties. The file of a property that receives a score of 30 points or less, or two successive scores under 60, on its inspection will be subject to additional administrative review. Properties that receive two successive scores under 60 may be referred to HUD's Departmental Enforcement Center (DEC) for evaluation. Properties that receive a score of 30 points or less shall be automatically referred to the DEC for evaluation.*

*(1) Notification to owner of submission of property file to the DEC. Upon referral to the DEC, the Department will provide for notification to the PHA or owner that the file on the owner's property is being submitted to the DEC for evaluation. The notification will be provided at the time the REAC issues the inspection report to the owner or at such other time as a referral occurs.*

*(2) Evaluation of the property. During the DEC's evaluation period, the DEC will perform an analysis of the property, which may include input from tenants, HUD officials, elected officials, maintenance staff and others as may be appropriate. Although program offices will assist with the evaluation, the DEC will have primary responsibility for the conclusion of the evaluation of the property after taking into consideration the input of interested parties as described in this paragraph. The DEC's evaluation may include a site visit to the PHA's or owner's property.*

*(3) Continuing responsibilities of HUD program offices and mortgagee. During the period of DEC evaluation, HUD's program offices continue to be responsible for routine business, oversight, and monitoring. In addition, during this period of evaluation, the mortgagee, as applicable, shall continue to carry out its duties and responsibilities with respect to the mortgage.*

*(4) Enforcement action. Except as otherwise provided by statute, if, based on the DEC's evaluation and in consultation with HUD program offices, the DEC determines that enforcement actions are appropriate, it may take those actions for which the DEC has delegated authority and/or make recommendations to HUD program office with respect to resolving identified physical deficiencies and owner or PHA noncompliance.*

*(j) No limitation on existing enforcement authority. The administrative process provided in this section does not prohibit HUD from taking whatever action may be necessary (notwithstanding the commencement of this process), as authorized under existing statutes, regulations, contracts, grant agreements or other documents, to protect HUD's interests in HUD housing properties and to protect the residents of these properties.*

#### § 5.713

*Second- and third-party rights.*

*Nothing in this subpart is intended to create any right of the family residing in HUD Housing or any party, other than HUD or a PHA, to require enforcement of the standards required by this subpart or to assert any claim against HUD or the PHA for damages, injunction, or other relief for alleged failure to enforce the standards.*

A detailed checklist of the Standards can be found at:

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/reac/nspire/standards](https://www.hud.gov/program_offices/public_indian_housing/reac/nspire/standards)

### **MINIMUM HEATING STANDARD**

*The PHA shall comply with the heating standards established State of Rhode Island.*

*The PHA shall use the following minimum heating requirements for public housing dwelling units in order to comply with Section 111 of HOTMA.*

A. *Minimum Temperature:*

*In properties where the heat is PHA-controlled, the minimum in each unit must be at least 68 degrees Fahrenheit.*

*In properties where the heat is tenant-controlled, then the heating equipment must have the capability of heating to at least 68 degrees Fahrenheit.*

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[1] Design-day temperature refers to the lowest expected outdoor temperature that a heating system was designed to accommodate and still maintain the desired indoor temperature. This should translate, depending on local building code, to an outdoor temperature in the 1<sup>st</sup> to 5<sup>th</sup> percentiles of low outdoor temperatures for an area. For example, for Washington, DC the design day temperature is around 17°F. This means that 97.5% of the time the outside temperature will be at least 17°F. Therefore, a properly sized heating system in Washington, DC should be able to maintain a building's indoor temperature at 68°F when it is at least 17°F outside.





### **3. NO SMOKING POLICY**

As required by HUD, the WHA is hereby adopting a policy to forbid smoking in all of its structures and within 25 feet of a WHA owned structure. It does not prohibit smoking by public housing residents. It just states where they cannot smoke. This policy shall go into effect on July 1, 2012.

#### **A. PURPOSE:**

*This policy was developed to:*

- 1. Protect tenants from the medical hazards of second-hand smoke;*
- 2. Protect lives and property from fires due to smoking accidents; and*
- 3. Reduce turnover costs associated with smoke damage in our residential units.*

#### **B. DEFINITIONS:**

***Prohibited tobacco products.*** *Items that involve the ignition and burning of tobacco leaves, such as (but not limited to) store bought or hand-rolled cigarettes, marijuana, cigars, and pipes. This includes water pipes and/or hookahs, e-cigarettes, e-hookahs, e-pipes and e-cigars.*

***Restricted areas.*** *Smoking is not allowed in any public housing living units and other interior areas. Interior areas include, but are not limited to, hallways, rental, and administrative offices, maintenance facilities, community centers, day care facilities, laundry facilities, and similar structures. Smoking is also prohibited within 25 feet of public housing and other PHA owned structures. This does not cover mixed-finance buildings.*

***Designated smoking areas.*** *Smoking will be limited to areas outside a restricted area and designated for smoking by the PHA. The area will be identified by a site plan attached to leases and/or signage<sup>1</sup> erected on the site. The designated smoking area will be accessible for persons with disabilities.*

*For Chestnut Court, we have an outdoor gazebo by building "C". There is a picnic table located behind/next to the dumpster, a bench in the back of building "B" by the community room, and a bench outside of building "A" located by the parking lot as you come into Chestnut Court are the only designated areas for smoking. For Park View, there is a bench outside Building 1, there is a bench at the end of Building 14, and a community gazebo (includes smokers and non-smokers) behind buildings 9 and 11.*

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<sup>1</sup> Follow the signage guidance on page 3 of PIH Notice 2017-03.

*Covered individuals.* This policy covers not only everyone living on the property, but also all guests and visitors. Each resident is responsible for his or her guests or visitors. Violations of this policy by an aide, guest or visitor will be considered to have been made by the resident(s) head of household.

**C. THE POLICY:**

*Beginning July 1, 2012, no lighted prohibited tobacco or marijuana products will be allowed in restricted areas of the PHA (all public housing living units and other interior areas. Interior areas include, but are not limited to, hallways, rental, and administrative offices, maintenance facilities, community centers, day care facilities, laundry facilities, and similar structures. Smoking is also prohibited within 25 feet of public housing and other PHA owned structures). Residents, aides, visitors, and guests are all covered by this policy. Any costs incurred by the PHA due to a violation of this policy by a resident, an aide, visitor, or guest shall become the financial obligation of the resident.*

**D. PHASE-IN PERIOD:**

*All residents will need to sign a new lease incorporating this policy into the lease and sign a form attached to the end of this acknowledging their understanding of the No Smoking Policy.*

*The PHA has formed a partnership with CODAC South County – Tobacco Cessation Services of Rhode Island (TCSRI), PACE, and Hope Recovery Community Center [A LOCAL GROUP WHO HELPS PEOPLE QUIT SMOKING] to assist people who want to begin their effort to quit smoking even before the new No Smoking Policy goes into effect. People desiring a referral should contact the Resident Service Coordinator. If the CODAC South County – Tobacco Cessation Services of Rhode Island (TCSRI), PACE, and Hope Recovery Community Center cannot accept a resident or applicant into its stop smoking program, this is not a valid reason to continue smoking. This policy must be complied with in all situations.*

*While the policy will not take effect until July 1, 2012, the PHA urges its smoking residents to begin their transition to a smoke-free life as soon as possible. The PHA recognizes that quitting smoking is a difficult task and urges its residents to give themselves as much time as possible to make the transition.*

*Residents living in the property when this policy is adopted, have time to make the transition. This will not be the case for smokers admitted after the effective date of this policy. The fact that one smokes is not a valid reason for rejecting an applicant for public housing. However, smokers admitted after the effective date of this policy are expected to comply with the policy immediately upon their admission to public housing. For this reason, the PHA will offer a referral to a smoking cessation program both upon a request to join the public housing waiting list and upon reaching the top of the waiting list and getting close to being offered a public*

housing unit. Whether one takes advantage of the referral is totally up to the applicant.

**E. REASONABLE ACCOMMODATION REQUESTS:**

*An addiction to nicotine or smoking is not a disability. That stated, a person with a disability may request a reasonable accommodation if they are a smoker. Reasonable accommodations will be made, where warranted, as quickly as possible.*

**F. PENALTIES FOR VIOLATING THIS POLICY:**

*If a resident, aide, visitor or guest violates this policy the following penalties shall be enforced:*

<i>First Offense</i>	<i>Oral Warning</i>
<i>Second Offense</i>	<i>Written Warning</i>
<i>Third Offense</i>	<i>Written Warning and a Referral to a Smoking Cessation Program if the violator is a resident</i>
<i>Fourth Offense</i>	<i>Lease violation #1</i>
<i>Fifth Offense</i>	<i>Lease violation #2</i>
<i>Sixth Offense</i>	<i>Lease violation #3 and Eviction notices</i>

*If the violator is an aide, visitor or guest; the graduated penalty steps will start over with each annual lease renewal. There is no start over for a resident.*

*All penalties assessed against a resident will be documented in the resident's file.*

**G. DISCLAIMER:**

*The PHA's adoption of this policy does not change the standard of care it has for the living units or common areas. The PHA specifically disclaims any implied or express warranties concerning the air quality in either the living units or common area. There is no warranty or promise that the air will be smoke free.*

***PHA***  
***Westerly Housing Authority***

I, \_\_\_\_\_, acknowledge receipt of a copy of the PHA's No Smoking Policy and the fact that it has been explained to me. I have read the policy and understand that the violation of the policy can lead to my and my family's eviction from the property.

\_\_\_\_\_ *Name* \_\_\_\_\_ *Date*

\_\_\_\_\_ *Name* \_\_\_\_\_ *Date*

\_\_\_\_\_ *Name* \_\_\_\_\_ *Date*

\_\_\_\_\_ *Name* \_\_\_\_\_ *Date*

\_\_\_\_\_ *Name* \_\_\_\_\_ *Date*

\_\_\_\_\_ *Name* \_\_\_\_\_ *Date*

#### **4. TERMINATION**

##### **TERMINATION BY TENANT**

*The tenant may terminate the lease at any time upon submitting a 30-day written notice. If the tenant vacates prior to the end of the thirty (30) calendar days, they will be responsible for rent through the end of the notice.*

##### **TERMINATION BY THE HOUSING AUTHORITY**

*Twelve months after the PHA has implemented the mandated Community Service Requirement, it will not renew the lease of any non-exempt family that is not in compliance with the Community Service Requirement or approved Agreement to Cure. If they do not voluntarily leave the property, eviction proceedings will begin.*

*The PHA will terminate the lease for serious or repeated violations of material lease terms. Such violations include, but are not limited to, the following:*

*A. Nonpayment of rent or other charges;*

*The PHA shall provide for additional time for non-payment of rent due when, during emergencies such as the current COVID-19 pandemic, if Federal funding is available to assist tenants with nonpayment of rent and tenants facing eviction for nonpayment of rent in public housing and the Secretary so requires.*

*(a) If the Secretary determines that tenants must be provided with adequate notice to secure Federal funding that is available due to a Presidential declaration of a national emergency:*

*(1) The notice of lease termination required in § 966.4(l)(3) for failure to pay rent must provide such information as required by the Secretary; and*

*(2) Notwithstanding § 966.4(l)(3)(i)(A), the notice of lease termination for failure to pay rent must provide for at least 30 days from the date the tenant receives the notice.*

*(b) Upon the Secretary's determination in paragraph (a) of this section, the PHA will provide notice to all tenants of the requirements in paragraph (a) taking effect.*

*B. A history of late rental payments;*

*C. Failure to provide timely and accurate information regarding family composition, income circumstances, or other information related to eligibility or rent;*

*D. Failure to allow inspection of the unit;*

*E. Failure to maintain the unit in a safe and sanitary manner;*

- F. *Assignment or subletting of the premises;*
- G. *Use of the premises for purposes other than as a dwelling unit (other than for housing authority approved resident businesses);*
- H. *Destruction of property;*
- I. *Acts of destruction, defacement, or removal of any part of the premises or failure to cause guests to refrain from such acts;*
- J. *Any violent or drug-related criminal activity on or off the premises, not just on or near the premises. This includes any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control. This includes but is not limited to the manufacture of methamphetamine on the premises of the PHA or on the premises of any other federally assisted housing;*
- K. *Non-compliance with Non-Citizen Rule requirements;*
- L. *Permitting persons not on the lease to reside in the unit more than fourteen (14) calendar days each year without the prior written approval of the Housing Authority;*
- M. *Any activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the Authority by the resident, household members, or guests of the resident or threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy;*
- N. *Alcohol abuse that the PHA determines interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;*
- O. *Failure to perform required community service or be exempted therefrom;*
- P. *The PHA will take immediate action to evict any household that includes an individual who is subject to a lifetime registration requirement under a State sex offender registration program;*
- Q. *Determination that a household member is illegally using a drug or when the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents. HUD has determined that Medical Marijuana is still a classified drug under the Federal Standards and is NOT allowed in Public Housing.*
- R. *Criminal activity as shown by a criminal record.*

S. *Disconnecting a smoke detector in any manner, removing any batteries from a Smoke Detector, Carbon Monoxide Detector, or failing to notify the Housing Authority if any detector is inoperable for any reason; and*

T. *Other good cause.*

*If an individual or family's lease is terminated for criminal activity, the PHA will notify the local post office serving the development that the individual or family no longer lives there.*

***[REGARDING TERMINATION OF TENANCY FOR CRIMINAL ACTIVITY OR ALCOHOL ABUSE, 24 CFR 966.4 (5) (vii) PROVIDES THE FOLLOWING OPTIONS. INCLUDE ANY OR ALL OF THEM IF YOUR HOUSING AUTHORITY SO CHOOSES. IF NOT, DELETE THEM.]***

*In deciding to terminate a tenancy for criminal activity or alcohol abuse, the PHA will consider circumstances relevant to the particular case such as the seriousness of the offending action, the extent of participation by the leaseholder in the offending action, the effects that the eviction would have on family members not involved in the offending activity, and the extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action.*

***AND/OR***

*In deciding to terminate a tenancy for criminal activity or alcohol abuse, the PHA will require a leaseholder 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 an action or failure to act that warrants the termination.*

***AND/OR***

*In deciding to terminate a tenancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member:*

- 1. Is participating in a supervised drug or alcohol rehabilitation program;*
- 2. Has successfully completed a supervised drug or alcohol rehabilitation program; or*
- 3. Has otherwise been successfully rehabilitated.*

*For this purpose, PHA may require the leaseholder to submit evidence of one of the above 3 statements.*

*In deciding whether to exercise their discretion to terminate an individual or household that has engaged in criminal activity, the PHA will consider all of the circumstances relevant to the particular admission or eviction decision, including but not limited to: the seriousness of the offending action; the effect that eviction of the entire household would have on family members not involved in the criminal activity; and the extent to which the leaseholder has taken all reasonable steps to prevent or mitigate the criminal activity.*

*An arrest record, alone, will not serve as sufficient evidence of criminal activity that can support an adverse termination, or eviction decision. Before the PHA evicts an individual or household on the basis of criminal activity by a household member or guest, it will determine that the relevant individual actually engaged in such activity.*

*An arrest record can trigger an inquiry into whether there is sufficient evidence to determine that a person engaged in disqualifying criminal activity, but is not itself evidence on which to base a determination. The PHA can utilize other evidence, such as police reports detailing the circumstances of the arrest, witness statements, and other relevant documentation to assist them in making a determination that disqualifying conduct occurred. Reliable evidence of a conviction for criminal conduct that would disqualify an individual for tenancy may also be the basis for determining that the disqualifying conduct in fact occurred.*

*If the PHA proposes to terminate assistance on the basis of a criminal record, the Housing Authority will notify the household of the proposed action to be based on the information and will provide the subject of the record and the tenant with a copy of the criminal record before the Housing Authority grievance hearing or court trial concerning the termination of tenancy or eviction. The tenant will be given an opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial. The family will have ten (10) business days to dispute the accuracy and relevance of the record in writing. If the Housing Authority does not receive the dispute within the allotted time, the family will be terminated.*

### **VAWA PROTECTIONS**

*Under the Violence Against Women Act (VAWA, notwithstanding the title of the statute, protections are not limited to women but cover victims regardless of sex, gender identity, or sexual orientation). Public housing residents have the following specific protections, which will be observed by the PHA:*

*An applicant for assistance or a tenant/participant receiving assistance under a covered housing provider may not be denied admission to, denied assistance under, terminated from participation in, or evicted from housing on the basis or as a direct result of the fact that the applicant or tenant/participant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.*

*An incident or incidents or actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence, and shall not in itself be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.*



*The PHA shall provide each applicant and resident a HUD prescribed Notice of Occupancy Rights and Certification form. This notice shall also be provided with any notice of eviction. In addition, the Authority shall make an adopted Emergency Transfer Plan and Emergency Transfer Request available upon request.*

*The PHA shall keep a record of all emergency transfer requests requested under the Emergency Transfer Plan and the outcome of these requests for three years.*

*The Housing Authority may terminate the assistance to remove a lawful occupant or tenant who engages in criminal acts or threatened acts of violence, dating violence, sexual assault, or stalking to family members or affiliated individuals without terminating the assistance or evicting victimized lawful occupants. This is also true even if the household member or affiliated individual is not a signatory to the lease. Under VAWA, the PHA is granted the authority to bifurcate the lease. The VAWA victim must be the one who retains the assistance.*

*The Housing Authority will honor court orders regarding the rights of access or control of the property.*

*There is no limitation on the ability of the Housing Authority to evict for other good cause unrelated to the incident or incidents of domestic violence, dating violence, sexual assault, or stalking, other than the victim may not be subject to a "more demanding standard" than non-victims.*

*There is no prohibition on the Housing Authority evicting if it "can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's (victim's) tenancy is not terminated." An actual and imminent threat consists of a physical danger that is real, would occur within an immediate timeframe, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.*

*Any protections provided by law which give greater protection to the victim are not superseded by these provisions.*

*The PHA shall require verification in all cases where an individual claims protection against an action involving such individual proposed to be taken by the Housing Authority. Types of acceptable verifications are outlined below, and must be submitted within 14 business days after receipt of the Housing Authority's written request for verification.*

#### **VERIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT OR STALKING**

*The PHA shall require verification in all cases where an individual claims protection against an action involving such individual proposed to be taken by the Housing Authority. The request for verification shall take the form of a written request by the PHA to the claimant.*

- A. Requirement for Verification.** *The law allows, but does not require, the PHA to verify that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking claimed by a tenant or other lawful occupant is bona fide and meets the requirements of the applicable definitions set forth in this policy. The Housing Authority shall require verification in all cases where an individual claims protection against an action involving such individual proposed to be taken by the Housing Authority.*

*Verification of a claimed incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may be accomplished in one of the following three ways:*

- 1. HUD-approved form** - *By providing to the Housing Authority a written certification, on the form approved by the U.S. Department of Housing and Urban Development (HUD), that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking that the incident or incidents in question are bona fide incidents of actual or threatened abuse meeting the requirements of the applicable definition(s) set forth in this policy. The incident or incidents in question must be described in reasonable detail as required in the HUD-approved form, and the completed certification must include the name of the perpetrator, only if the name of the perpetrator is safe to provide and is known to the victim.*
  - 2. Other documentation** - *by providing to the Housing Authority documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing the domestic violence, dating violence, sexual assault, or stalking, or the effects of the abuse, described in such documentation. The professional providing the documentation must sign and attest under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse meeting the requirements of the applicable definition(s) set forth in this policy. The victim of the incident or incidents of domestic violence, dating violence, sexual assault or stalking described in the documentation must also sign and attest to the documentation under penalty of perjury.*
  - 3. Police or court record** – *by providing to the Housing Authority a Federal, State, tribal, territorial, or local law enforcement or court record describing the incident or incidents in question.*
- B. Time allowed to provide verification/failure to provide.** *An individual who claims protection against adverse action based on an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking, and who is requested by the Housing Authority to provide verification, must provide such verification within 14 business days after receipt of the written request for verification. Failure to provide verification, in proper form within such time will result in loss of protection under VAWA and this policy against a proposed adverse action. The submission of false information may be the basis for the termination of assistance or for eviction.*
- C. Managing conflicting documentation.** *In cases where the PHA receives conflicting certification documents from two or more members of a household, each claiming to be a*

victim and naming one or more of the other petitioning household members as the perpetrator, the PHA may determine which is the true victim by requiring third-party documentation as described in 24 CFR 5.2007 and in accordance with any HUD guidance as to how such determinations will be made. The PHA shall honor any court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household.

### **CONFIDENTIALITY**

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

- A. Requested or consented to by the individual in writing;
- B. Required for used in an eviction proceeding; or
- C. Otherwise required by applicable law.

The PHA shall provide its tenants notice of their rights under VAWA including their right to confidentiality and the limits thereof.

### **TERMINATIONS FOR CRIMINAL ACTIVITY [INSERT ONLY IF YOUR STATE IS A HUD-DETERMINED "DUE PROCESS" STATE]**

- A. The term "due process determination" means a determination by HUD that law covering the PHA's jurisdiction requires that residents must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit.
- B. HUD has issued a due process determination that the law of this State requires that residents be given the opportunity for a hearing in a court that provides the basic elements of due process before eviction from a dwelling unit.
- C. The PHA has therefore determined that this Grievance Procedure shall not be applicable to any termination of tenancy or eviction for:
  - 1. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the Housing Authority;
  - 2. Any violent or drug-related criminal activity on or off such premises; or
  - 3. Any activity resulting in a felony conviction.

### **ABANDONMENT**

*The PHA will consider a unit to be abandoned when a resident has both fallen behind in rent **AND** has clearly indicated by words or actions an intention not to continue living in the unit.*

*When a unit has been abandoned, an PHA representative may enter the unit and remove any abandoned property. It will be stored in a reasonably secure place. A notice will be mailed to the resident stating where the property is being stored and when it will be sold. If the PHA does not have a new address for the resident, the notice will be mailed to the unit address so it can be forwarded by the post office.*

*If the total value of the property is estimated at less than **(Insert an amount)**, the PHA will mail a notice of the sale or disposition to the resident and then wait **(Insert number of calendar days by State law)**. Family pictures, keepsakes, and personal papers cannot be sold or disposed of until **(Insert number of calendars by State law)** calendar days after the PHA mails the notice of abandonment.*

*If the estimated value of the property is more than **(Insert an amount)**, the PHA will mail a notice of the sale or disposition to the resident and then wait **(Insert number of calendar days in accordance with State law)** calendar days before sale or disposition. Personal papers, family pictures, and keepsakes can be sold or disposed of at the same time as other property.*

*Any money raised by the sale of the property goes to cover money owed by the family to the PHA such as back rent and the cost of storing and selling the goods. If there is any money left over and the family's forwarding address is known the PHA will mail it to the family. If the family's address is not known, the PHA will keep it for the resident for one year. If it is not claimed within that time, it belongs to the PHA.*

*Within **(Insert number of calendar days in accordance with State law)** calendar days of learning of an abandonment, the PHA will either return the deposit or provide a statement of why the deposit is being kept.*

#### **RETURN OF SECURITY DEPOSIT**

*After a family moves out, the PHA will return the security deposit within **(Insert the number of calendar days in accordance with State law)** or give the family a written statement of why all or part of the security deposit is being kept. The rental unit must be restored to the same conditions as when the family moved in, except for normal wear and tear. Deposits will not be used to cover normal wear and tear or damage that existed when the family moved in.*

*If State law requires the payment of interest on security deposits, it shall be complied with.*

*The PHA will be considered in compliance with the above if the required payment, statement, or both, are deposited in the U.S. mail with first class postage paid within **(Insert the number of calendar days as required by State law)** calendar days.*

#### **THE EIV'S DECEASED TENANTS REPORT**

*The PHA shall generate the EIV's Deceased Tenants Report monthly shortly before either the end of the month or creating rent statements to see if the system flags deceased residents. The PHA shall review the report and follow up with any listed families immediately and take any necessary corrective action as set forth in PIH Notice 2010-50 or successor publications.*

*If it is a single member household, **the Housing Authority shall** immediately visit the unit and determine if it is vacant or occupied by an unauthorized person. If improperly occupied, **the Housing Authority shall** take immediate eviction actions under state law. If the property is occupied by a live-in-aide to the deceased person, the aide must move out immediately and is not eligible for continued occupancy or rental assistance.*



## **1. GRIEVANCE POLICY**

Establishment of Informal Hearing with WHA

### **Reasons for Informal Hearing with Management**

An informal hearing shall be established to afford a tenant or applicant an opportunity for a fair hearing if they dispute within a reasonable time any WHA action or failure to act by the lease requirements or any Property Management action or failure to act involving interpretation or application of the Housing Authority's regulations, policies or procedures which adversely affect the tenant's or applicant's rights, duties, welfare or status.

Who is the Informal Hearing Officer

The informal hearing shall consist of one (1) person from WHA Management. This member of management cannot be one whose duties and responsibilities involve them in any way with the grievance at issue.

Establishment of Grievance Panel Hearing

Reasons for Grievance Panel Hearing

An impartial grievance panel hearing shall be established to afford a tenant or applicant an opportunity for a fair hearing if they dispute, within a reasonable time, any WHA action or failure to act in accordance with the lease requirements, or any WHA action or failure to act involving interpretation or application of the WHA's regulations, policies, or procedures that adversely affect the tenant's or applicant's rights, duties, welfare or status.

Who are the members of the Grievance Panel Hearing

The Hearing Panel shall consist of five (5) members, one (1) selected in alphabetical order from the tenant membership of the RAB; two (2) appointed by the Property Management; and, Two (2) impartial and disinterested members who shall be selected from a pool of grievance panel members from separate agencies or organizations in The Westerly area and who have been approved jointly by the RAB Affairs and Property Management.

Restrictions on who may be a Hearing Panel Member

Restriction on who may be a Chairperson

The impartial or disinterested member of the Hearing Panel shall be the CHAIRPERSON of the hearing or hearings. The disinterested or unbiased member

of the Panel may not be an officer or an employee of WHA or any of its projects, a tenant of the Property Management, or an employee of the WHA.

#### Restriction on other Hearing Panel members

There shall be no relatives of the complainant on the Panel which hears their complaint; nor shall any Property Management officer or employee whose duties and responsibilities involve them in any way with the grievance at issue, sit as a member of the Hearing Panel for that particular meeting.

#### Secretary to the Hearing Panel

The Secretary to the Grievance Panel will be an elected official from the RAB in accordance with the Bylaws of the RAB.

#### Proceedings Before a Grievance Panel Hearing

##### Tenant Grievances

The complaint must be presented in writing to Project Office.

A tenant grievance or complaint must be personally presented in writing and signed by the complainant to the Property Management office of the project in which the complainant resides so that the grievance may be formally discussed and resolved without a hearing. Said grievance or complaint must be filed within ten (10) days of the Property Management action or failure to act, which is the basis for the grievance and must specify: (I) the particular grounds upon which it is based and (ii) the action requested.

#### **The complaint is over the amount of rent.**

If the complaint is over the amount of rent which the Property Management claims are due, the complainant shall deposit in the Property Management Tenant Escrow account, the amount needed to bring the tenant current with the entire rental amount due and payable on the first of the month preceding the month of the Property Management's act on which the tenant seeks a grievance hearing and shall After that deposit, the same amount of the monthly rent in WHA Tenant Escrow account when due, pending settlement of the dispute by the Informal Hearing Officer or the completion of all Grievance Panel procedures, including the time allotted the Property Management to appeal the decision of the Grievance Panel. If the complainant fails to do so by the time allowed to petition for hearings or fails to continue to pay the escrow rent when due until completion of all Informal Hearing and Grievance Panel procedures, the Informal Hearing Officer or Grievance Panel shall determine that the complainant has waived their right to an Informal and/or Grievance Panel hearing. Such determination shall not constitute a waiver of the complainant's right to contest thereafter the local Property Management's disposition of their grievance in an



appropriate judicial proceeding. The Executive Director may waive the requirement of an escrow deposit in extenuating circumstances.

#### Answer to the grievance from the Project Manager

An answer in writing to each complaint, dated and signed by the Project Manager, shall be delivered or mailed to the Complainant within ten (10) Days are specifying: (I) the proposed disposition of the complaint and the reason, therefore, (ii) the rights of the complainant to an informal hearing with another member of management, and (iii) the procedure by which that informal hearing may be obtained, and (iv) the rights of the complainant to a hearing with the Hearing Panel.

#### Complainant dissatisfied with the decision of Project Manager

If the tenant is dissatisfied with the proposed disposition of their complaint, they shall return within ten (10) days of delivery of such answer to their complaint or notice from the Property Management to petition the Executive Director in writing for an informal hearing. Within ten (10) days of such notice, the Executive Director shall set a date for the informal hearing and shall inform the tenant in writing of (I) the date, time, and place of the informal hearing, and (ii) the tenant's right to a Grievance Panel Hearing, and (iii) the consequences of failure to petition for an informal hearing.

#### Failure to petition for an Informal Hearing within the time frame

If the tenant fails to petition for an Informal Hearing within ten (10) days, without good cause, they will be held to have waived their right to an Informal Hearing and a Grievance Panel Hearing, and the proposed Housing Authority disposition of the complaint shall be binding. Such determination shall not constitute a waiver of the complainant's right to appeal after the fact, the local Property Management's disposition of their grievance in an appropriate judicial proceeding.

#### Complainant dissatisfied with the decision of the Informal Hearing Officer

If the tenant is dissatisfied with the decision of the Informal Hearing Officer they shall, within ten (10) days of delivery of such determination, to their complaint or notice from the Property Management, petition the Executive Director in writing for a Grievance Panel Hearing. Upon such notice, the Executive Director shall: (I) set a date for the Grievance Panel Hearing, and (ii) inform the Tenant in writing of the date, time, and place of the Grievance Panel hearing, and (iii) shall also notify the Secretary of the Board of Tenants' Affairs in writing of the date, time, and place of the Grievance Panel Hearing, and (iv) consequences of failure to petition for a Grievance Panel hearing.

#### Failure to petition for Grievance Panel Hearing within the time frame

If the tenant fails to petition for a Grievance Panel hearing within ten (10) days, without good cause, they will be held to have waived their right to a Grievance Panel hearing and the proposed Property Management disposition of the complaint shall be binding. Such determination shall not constitute a waiver of the complainant's right to contest the local Property Management's disposition of their grievance in an appropriate judicial proceeding.

#### Applicant Grievances

The complaint must be presented in writing to the Main office.

An applicant's grievance or complaint must be personally presented in writing and signed by the complainant to the Property Management Main office. Said grievance or complaint must be filed within ten (10) days of the Property Management action or failure to act, which is the basis for the grievance and must specify: (I) the particular grounds upon which it is based, and (ii) the action requested.

#### Answer to applicant's grievance from Executive Director

An answer in writing to each complaint dated and signed by the Executive Director shall be delivered or mailed to the complainant within ten (10) days specifying: (I) the proposed disposition of the complaint and the reason, therefore, and

(ii) the rights of the complainant to an informal hearing with another member of management, and (iii) the procedure by which that informal hearing may be obtained, and (iv) the rights of the complainant to a hearing.

#### Complainant dissatisfied with the decision of Executive Director

If the tenant is dissatisfied with the proposed disposition of their complaint,, they shall, within ten (10) days of delivery of such answer to their complaint or notice from the Property Management, petition the Executive Director in writing for an informal hearing. Upon such information, the Executive Director shall set a date for the informal hearing and shall inform the tenant in writing of the date, time, and place. The Executive Director shall also notify the complainant of their right to a Grievance Panel Hearing.

#### Failure to petition for an Informal Hearing within the time frame

If the applicant fails to petition for an Informal Hearing within ten (10) days, without good cause, they will be held to have waived their right to such hearing and the proposed Property Management disposition of the complaint shall be binding. Such determination shall not constitute a waiver of the complainant's right to after that contest the local Property Management's disposition of their

grievance in an appropriate judicial proceeding.

Complainant (applicant) dissatisfied with the decision of the Informal Hearing Officer

If the applicant is dissatisfied with the decision of the Informal Hearing Officer, they shall, within ten (10) days of delivery of such determination to their complaint or notice from the Property Management, petition the Executive Director in writing for a Grievance Panel Hearing. Upon such notice, the Executive Director shall (i) set a date for the Grievance Panel Hearing, and (ii) inform the tenant in writing of the date, time, and place of the Grievance Panel Hearing, and (iii) shall also notify the Secretary of the Board of Tenants' Affairs in writing of the date, time, and place of the Grievance Panel Hearing, and (iv) consequences of failure to petition for Grievance Panel Hearing

Failure to petition for Grievance Panel Hearing within the time frame

If the applicant fails to petition for a Grievance Panel Hearing within ten (10) days, without good cause, they will be held to have waived their right to a Grievance Panel Hearing and the proposed Property Management disposition of the The complaint shall be binding. Such determination shall not constitute a waiver of the complainant's right to contest the local Property Management's disposition of their grievance in an appropriate judicial proceeding.

Conduct of Hearings

Entitled to Counsel

All tenants or applicants for tenancy, as well as the Property Management, shall be entitled to an Informal Hearing and a Grievance Panel Hearing. At such hearings, the complainants may be represented by counsel or other persons chosen as a representative.

Private Informal Hearings

The Informal Hearing shall be private. The Grievance Panel Hearing shall be private unless the complainant requests and the Grievance Panel agrees to a public hearing. Regulations and evidence

The complainant may examine before the hearing and, at their expense, copies of all documents, records, and regulations of the Property Management relevant to the hearing. Any documents in possession of the Property Management which are not made available after request therefore by the complainant may not be relied on by the Property Management or the project management at the hearing. The complainant may request in advance, at their expense, a transcript of any hearings.

Cancellation of Informal Hearings

If the complainant fails to notify the Informal Hearing Officer in writing of a request to

postpone the hearing within 24 hours of the time of the scheduled hearing, the Informal Hearing Officer will determine that the complainant has waived their rights to the Informal Hearing and the Grievance Panel Hearing.

#### Waiver of Informal Hearing Procedure

The Property Management can waive the informal hearing steps if the Authority believes that the Informal Hearing Officer would not CHANGE the decision of the management person answering the complaint. The Property Management shall give reasons for its determination.

#### Request by the complainant to bypass Informal Hearing Procedure

The complainant may request that the informal hearing process be bypassed. The complainant must explain why they are requesting a waiver of the Informal Hearing.

The Property Management reserves the right to deny such waiver.

#### Cancellation of Grievance Panel Hearings

If the complainant or the Property Management fails to notify the Secretary of the Grievance Panel in writing of a request to postpone the Grievance Panel Hearing within 24 hours of the scheduled hearing, the Grievance Panel may make a determination to postpone the hearing for not to exceed five (5) business days or may determine that the party has waived their rights to the Grievance Panel Hearing. Both the complainant and the Property Management shall be notified of the decision by the Hearing Panel.

#### Burden of Proof

At the Grievance Panel Hearing and in all cases except evictions, the complainant must make a prima facie case. Then the burden of proof is on the Property Management to justify the action or inaction proposed by it in its answer to the complaint. In cases dealing with evictions, the burden of proof is on the Property Management to justify the proposed expulsion. The complainant may present evidence and arguments in support of their complaint, controvert evidence relied on by the Property Management, and confront and cross-examine all witnesses on whose testimony or information the Property Management relies.

All parties to take Oath.

All parties testifying at Grievance Panel Hearings shall take an oath, to tell the truth. Such oath is to be administered by the CHAIRPERSON of the Grievance Panel Hearing.

#### Decisions of the Grievance Panel

### Communication of decision

The Grievance Panel shall prepare its written decision, including a statement of findings and conclusions and the reasons or basis for all material issues raised by the parties. This shall be done within seven (7) days after the hearing date. Copies, therefore, shall be mailed or delivered to the parties and their representatives.

The decision of the Hearing Panel shall be based solely and exclusively upon facts presented at the hearing upon Oklahoma law, the Federal Minimum Housing Act of 1937, HUD regulations, and applicable Property Management rules and regulations.

### The decision in favor of the tenant or applicant

If the decision of the Hearing Panel is in favor of the complainant, the Property Management shall promptly take all action necessary to carry out such decision or refrain from any action prohibited by such decision unless the Executive Director for the Property Management determines and notifies the complainant and the Board of Tenant Affairs in writing within ten (10) days that the Hearing Panel has acted arbitrarily or exceeded its authority. The notice to the complainant shall specify that the Executive Director will ask that the Board of Commissioners for the Property Management pass a resolution at the next regularly scheduled meeting; the answer would state that the Hearing Panel has acted arbitrarily or exceeded its authority. Such notice shall also indicate the time and date of the next regularly scheduled meeting of the Board of Commissioners. The Board of Commissioners of the Property Management must notify the complainant in writing within five (5) days of its decision that the resolution passed or failed. If the Board of Commissioners passed such a resolution, the Property Management might commence an action to regain possession of the premises pursuant to Article of the lease and thereby incur the burden of proving that the contested decision was arbitrary and capricious. In such judicial proceedings, the Property Management shall be limited to invoking against the complainant the grounds originally relied on by the Property Management in its proposed disposition of the complaint.

### The decision in favor of Property Management

If the decision of the Grievance Panel is in favor of the Property Management, an action to regain possession may not be commenced until after the tenant's right to use and/or occupy the premises has been terminated pursuant to the notice provisions of the lease. Such notice to vacate may not be given before the date on which the Grievance Panel's A decision upholding the proposed eviction is delivered or mailed to the tenant.



## ***PUBLIC HOUSING GRIEVANCE PROCEDURE***

### ***RIGHT TO A HEARING***

*Upon the filing of a verbal or written request within a reasonable timeframe as provided in these procedures, a resident shall be entitled to a hearing before a Hearing Officer.*

#### ***Applicability***

*In accordance with Federal Regulation 24 CFR § 966.51, this Grievance Procedure shall be applicable to all individual grievances between the tenant and the PHA. The PHA grievance procedure is not applicable to disputes between tenants not involving the PHA or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and the PHA's Board of Commissioners.*

### ***DEFINITIONS***

*For the purpose of this Grievance Procedure, the following definitions are applicable:*

- A. "Grievance" shall mean any dispute which a resident may have with respect to the PHA's action or failure to act in accordance with the individual resident's lease or Authority regulations which adversely affect the individual resident's rights, duties, welfare or status. Grievance does not include any dispute a resident may have with the Authority concerning a termination of tenancy or eviction that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the Authority's public housing premises by other residents or employees of the Authority; or any violent or drug-related criminal activity on or off such premises. Nor shall this process apply to disputes between residents not involving the PHA or to class grievances.*
- B. "Complainant" shall mean any resident whose grievance is presented to the PHA or at the development management office in accordance with sections 3.0 and 4.0 of this procedure.*
- C. "Elements of Due Process" shall mean an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required:*
  - 1. Adequate notice to the resident of the grounds for terminating the tenancy and for eviction;*
  - 2. Right of the resident to be represented by counsel;*
  - 3. Opportunity for the resident to refute the evidence presented by the Authority including the right to confront and cross examine witnesses and to present any*

*affirmative legal or equitable defense which the resident may have; and*

4. *A decision on the merits.*

D. *"Hearing Officer" means an impartial person or persons selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training.*

E. *Informal Settlement*

*The first step in the hearing process is an informal settlement of the grievance. If the grievance involves a lease termination for criminal activity or behavior that threatens the health, safety or right to peaceful enjoyment of the premises of the other residents or employees of USA Housing Agency, there is no informal settlement, and the resident must request a formal grievance hearing. The PHA will accept grievances either orally or in writing submitted to the PHA office within 10 business days of the event. Within 10 business days of receipt of the request the PHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.*

*PHA will prepare a summary of such discussion within 10 business days of the Informal Settlement meeting; one copy will be given to the tenant, and one retained in the XYZ's tenant file*

F. *"Resident" shall mean the adult person (or persons) other than a live-in aide:*

1. *Who resides in the unit and who executed the lease with the PHA as lessee of the premises, or, if no such person now resides in the premises,*

2. *Who resides in the unit and who is the remaining head of household of the resident family residing in the unit.*

G. *"Resident Organization" includes a resident management corporation.*

H. *"Promptly" (as used in section 3.0, and 4.0 (D)), shall mean within the time period indicated in a notice from PHA of a proposed action which would provide the basis for a grievance if the resident has received a notice of a proposed action from the agency.*

#### ***PROCEDURES PRIOR TO A HEARING***

*Any grievance shall be promptly and personally presented, either orally or in writing, to the PHA office or the property management office so that the grievance may be discussed informally and settled without a hearing. This must occur within TEN (10) business days of the occurrence or non-occurrence of the event. A summary of such discussion shall be prepared within TEN (10) business days and one copy shall be given to the resident and one retained in the Authority's resident file. The summary shall specify the names of the participants, dates of the meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and shall*



*specify the procedures by which a hearing under these procedures may be obtained if the resident is not satisfied.*

## **PROCEDURES TO OBTAIN A HEARING**

### **REQUEST FOR HEARING**

*The resident shall submit a oral or written request for a hearing to the Authority or the development office within TEN (10) business days from the date of the mailing of the summary of the discussion pursuant to section 3.0. The written request shall specify:*

- A. The reasons for the grievance; and*
- B. The action or relief sought.*

### **SELECTION OF A HEARING OFFICER**

*A grievance hearing shall be conducted by an impartial person appointed by the PHA Executive Director, other than a person who made or approved the action under review or a subordinate of such person.*

### **FAILURE TO REQUEST A HEARING**

*If the resident does not request a hearing within Ten (10) business days, then the PHA's disposition of the grievance under section 3.0 shall become final. However, failure to request a hearing does not constitute a waiver by the resident of the right thereafter to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding.*

### **HEARING PREREQUISITE**

*All grievances shall be promptly presented in person, either orally or in writing, pursuant to the informal procedure prescribed in section 3.0 as a condition precedent to a hearing under this Section. However, if the resident can show good cause why there was failure to proceed in accordance with section 3.0 to the Hearing Officer, the provisions of this subsection may be waived by the Hearing Officer.*

### **ESCROW DEPOSIT**

*Before a hearing is scheduled in any grievance involving the amount of rent as defined in the lease which the PHA claims is due, the resident shall pay to the PHA an amount equal to the amount of the rent due and payable as of the first of the month preceding the month in which the act or failure to act took place. The resident shall thereafter deposit monthly the same amount of the monthly rent in an escrow account held by the PHA until the complaint is resolved by decision of the Hearing Officer. Amounts deposited into the escrow account shall not be considered as acceptance of money for rent during the period in which the grievance is pending.*

*In extenuating circumstances, the PHA may waive these requirements. Unless so waived, the failure to make such payments shall result in a termination of the grievance procedure. However, failure to make payment shall not constitute a waiver of any right the resident may have to contest the PHA's disposition of his grievance in any appropriate judicial proceeding.*

*If a grievance concerns the denial of a financial hardship exemption from the minimum rent requirement or the effect of welfare benefit reductions in the calculation of family income, the requirement for an escrow deposit is waived.*

#### **SCHEDULING OF HEARINGS**

*Upon the resident's compliance with this section the Hearing Officer shall promptly schedule a hearing for a time and place reasonably convenient to both the resident and the PHA. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the resident and the appropriate agency official.*

*The Hearing must be conducted informally by the Hearing Officer and oral or documentary evidence pertinent to the facts and issues raised by the tenant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The Hearing Officer must require the USA Housing Agency, the tenant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the Hearing Officer to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and the granting or denial of the relief sought, as appropriate.*

#### **PROCEDURES GOVERNING THE HEARING**

*The resident shall be afforded a fair hearing, which shall include:*

- A. The opportunity to examine before the grievance hearing any Authority documents, including records and regulations that are directly relevant to the hearing. The resident shall be provided a copy of any such document at the resident's expense. If the PHA does not make the document available for examination upon request by the resident, the PHA may not rely on such document at the grievance hearing.*
- B. The right to be represented by counsel or other person chosen as the resident's representative and to have such person make statements on the resident's behalf;*
- C. The right to a private hearing unless the resident requests a public hearing;*
- D. The right to present evidence and arguments in support of the resident's complaint, to controvert evidence relied on by the Authority or development management, and to confront and cross examine all witnesses upon whose testimony or information the PHA or development management relies; and*

- E. *A decision based solely and exclusively upon the facts presented at the hearing.*
- F. *The resident or housing authority can arrange in advance at their own expense for a transcript of the hearing. Anyone can purchase a copy of the transcript.*

*The Hearing Officer may render a decision without holding a hearing if the Hearing Officer determines that the issue has been previously decided at another hearing.*

*If either the resident or Authority fails to appear at a scheduled hearing, the Hearing Officer may postpone the hearing for up to FIVE business days or determine that the missing party has waived their right to a hearing. Both the PHA and the resident shall be notified of the Hearing Officer's decision. This decision shall not waive a resident's right to contest the disposition of the grievance in an appropriate judicial proceeding.*

*The following accommodation will be made for persons with disabilities:*

- A. *The PHA shall provide reasonable accommodations for persons with disabilities to participate in the hearing. Reasonable accommodations may include qualified sign language interpreters, readers, accessible locations, or attendants.*
- B. *If the resident is visually impaired, any notice to the resident that is required by these procedures must be in an accessible format.*

*If the resident is a person with limited English proficiency, the PHA will comply with HUD's "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons."*

### ***INFORMAL HEARING PROCEDURES FOR DENIAL OF ASSISTANCE ON THE BASIS ON INELIGIBLE IMMIGRATION STATUS***

*The participant family may request that the PHA provide for an informal hearing after the family has notification of the INS decision on appeal, or in lieu of request of appeal to the INS. The participant family must make this request within 30 days of receipt of the Notice of Denial or Termination of Assistance, or within 30 days of receipt of the INS appeal decision.*

### ***DECISION OF THE HEARING OFFICER***

*The Hearing Officer shall prepare a written decision, together with the reasons therefor, within fourteen (14) calendar days after the hearing. A copy of the decision shall be sent to the resident and the PHA. The Authority shall retain a copy of the decision in the resident's folder*

*The PHA will maintain a log of all hearing officer decisions. The log shall contain the date of the hearing, the general reason for the grievance hearing (i.e. failure to pay rent, community service noncompliance, etc.), and who the decision favored. The log shall be available to the hearing officer or a prospective complainant or the complainant's representative.*

*The decision of the Hearing Officer shall be binding on the PHA who shall take all actions, or refrain from any actions, necessary to carry out the decision unless the PHA's Board of Commissioners determines at its next meeting, and promptly notifies the complainant of its determination, that:*

- A. The grievance does not concern PHA action or failure to act in accordance with or involving the resident's lease or Authority regulations, which adversely affect the resident's rights, duties, welfare or status;*
- B. The decision of the Hearing Officer is contrary to applicable Federal, State, or local law, HUD regulations, or requirements of the Annual Contributions Contract between the Authority and the U.S. Department of Housing and Urban Development.*

*A decision by the Hearing Officer or Board of Commissioners in favor of the PHA or which denies the relief requested by the resident in whole or in part shall not constitute a waiver of, nor affect in any manner whatsoever, any rights the resident may have to a trial do novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.*

**EXHIBIT 1**

**WESTERLY HOUSING AUTHORITY**

**DECISION ON TENANT OR APPLICANT'S GRIEVANCE OR COMPLAINT**

**Date:** \_\_\_\_\_

**Dear** \_\_\_\_\_ :

**We have reviewed your grievance and/or your complaint dated \_\_\_\_\_. We have determined that your grievance and/or complaint should be disposed of by doing the following action:**

**We have come to propose this action for the following reason:**

**This determination is based on our having received the following specific information:**

**If you disagree with this determination, you may request an informal hearing within ten (10) days from the date of mailing of this letter by sending or delivering a request to Executive Director at the above address. You may have access to your file before the hearing to see any information we have concerning your grievance. You have the right to present evidence at this hearing, including witnesses, and you may bring an attorney or other representative if you desire.**

**If you are not satisfied with the result of the informal hearing, you will be able to request an impartial hearing before the Grievance Panel. Information on how to request a Grievance Panel Hearing will be provided to you with the Informal Hearing decision.**

**Your right to a hearing does not stop you from exercising other rights if you believe you are being discriminated against based on race, color, religion, sex, marital status, national origin, handicap, or age.**

**An informal hearing will be held within ten (10) working days of your request.**

**Sincerely,**

**EXHIBIT 2**

**WESTERLY HOUSING AUTHORITY  
WESTERLY, RI**

**INFORMAL HEARING DECISION**

**Date:** \_\_\_\_\_

**Dear** \_\_\_\_\_:

**Based on your informal hearing held on \_\_\_\_\_, we have decided that:**

**If you are dissatisfied with this decision, you may request an impartial hearing before the Grievance Panel by completing the attached Grievance Panel Request Form and by personally presenting the Grievance Panel Request Form at the Administrative Office of WHA, within ten (10) days of the mailing of this decision.**

**If you fail to petition for a Grievance Panel Hearing within ten (10) days, without good cause, you will be held to have waived your right to a Grievance Panel Hearing, and the proposed Property Management disposition of your complaint shall be binding. Such determination shall not constitute a waiver of your right to contest the Property Management's disposition of your grievance in an appropriate judicial proceeding.**

**EXHIBIT 3**

**WESTERLY HOUSING AUTHORITY  
WESTERLY, RI**

**NOTICE OF INFORMAL HEARING ON TENANT OR  
APPLICANT'S GRIEVANCE OR COMPLAINT**

**Date:** \_\_\_\_\_

**Dear** \_\_\_\_\_:

**You have requested an informal hearing (see attached request).**

**This Informal Hearing is scheduled for the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, at Administrative office of WHA. You are free to bring any information, documents, or witnesses to support your case, and you may bring an attorney or other representative.**

**If you are not satisfied with the result of the Informal Hearing, you will be able to request an impartial hearing before the Grievance Panel. Information on how to request a Grievance Panel Hearing will be provided to you with the Informal Hearing decision.**

**If you fail to notify the Informal Hearing Officer in writing of a request to postpone the hearing within 24 hours of the time of the scheduled Informal Hearing, the Informal Hearing Officer will make a determination that you have waived your rights to the Informal Hearing and the Grievance Panel Hearing.**

**Your right to a hearing does not stop you from exercising other rights if you believe that you are being discriminated against on the basis of race, color, religion, sex, marital status, national origin, handicap, or age.**

**An Informal Hearing will be held within ten (10) working days of your request.**

**Sincerely,**

**EXHIBIT 4**

**WESTERLY HOUSING AUTHORITY  
WESTERLY, RI**

**NOTICE OF GRIEVANCE PANEL HEARING**

**Date:** \_\_\_\_\_

**Dear** \_\_\_\_\_:

**You have requested a Grievance Panel Hearing on the disposition of your grievance and/or complaint.**

**This Grievance Panel Hearing is scheduled for the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_, at the WHA. You are free to bring any information, documents, or witnesses to support your case, and you may bring an attorney or other representative.**

**If you fail to notify the Executive Director and/or the Secretary in writing of any request to postpone the Grievance Panel Hearing within 24 hours of the time of the scheduled hearing, the Grievance Panel may decide to postpone the hearing for not to exceed five (5) business days or determine that the party has waived their rights to the Grievance Panel Hearing.**

**The Authority has already provided you with a copy of the established Grievance Procedures. If you need another copy, please go to your project office or the Administrative Office.**

**Sincerely,**



**EXHIBIT 5**

**WESTERLY HOUSING AUTHORITY  
WESTERLY, RI**

**GRIEVANCE PANEL REQUEST FORM**

I, \_\_\_\_\_, of \_\_\_\_\_ hereby request that the WHA, convene a Grievance Hearing on one of the following:

**CHECK ONE:**

\_\_\_\_\_ I disagree with the CHANGE in rent as stated on your notice of a rental adjustment, and therefore I am requesting a hearing with the Grievance Panel. I have placed the rent in the escrow bank account of the Authority, and I realize that I must continue to put the monthly rent in the escrow account until a final decision is made under the Grievance Procedure.

\_\_\_\_\_ I do not owe the rent as stated on your five-day demand notice, and therefore I am requesting a hearing with the Grievance Panel. I have placed the rent due in the escrow bank account of the Authority, and I realize that I must continue to put the monthly rent in the escrow account until a final decision is made under the Grievance Procedure.

\_\_\_\_\_ I disagree 100 percent with the decision made by the Hearing Officer at the informal hearing held on \_\_\_\_\_ (see attached decision).

\_\_\_\_\_ I disagree in part with the decision made by the Hearing Officer at the informal hearing held on \_\_\_\_\_ (see attached decision) for the following reasons:

|

I prefer to have a Grievance Panel Hearing at the following time(s) of day:

First preference: \_\_\_\_\_

Second preference: \_\_\_\_\_

Third preference: \_\_\_\_\_

**I have received a copy of the Grievance Panel Request Form.**

**I have received a copy of the Grievance Panel Procedures.**

---

**Signature Date**

---

**Signature Date**

=====

**Received by the WHA on**

---

**Date Time:**

---

**Signature**

=====

**Copy to WHA Attorney**

**Copy to Tenant/Applicant**

**Copy to WHA Tenant/Applicant file**

## REPAYMENT AGREEMENTS

When a resident owes the WHA retroactive rent or back charges and is unable to pay the balance by the due date, the resident may request that the WHA allow them to enter into a Repayment Agreement. The WHA has the sole discretion of whether to accept such an agreement. All Repayment Agreements must assure that the full payment is made within a period not to exceed 6 months. If feasible, the total amount paid will not exceed 40% of monthly adjusted income. All Repayment Agreements must be in writing and signed by both parties. They must include the following elements:

- A. Reference to the paragraphs in the Public Housing lease whereby the tenant is in non-compliance and may be subject to termination of tenancy or assistance, or both.
- B. The monthly retroactive rent repayment amount is in addition to the family's regular rent contribution and is payable to the PHA.
- C. The terms of the agreement may be renegotiated if there is a decrease or increase in the family's income.
- D. Late and missed payments constitute default of the repayment agreement and may result in termination of tenancy and/or assistance.

Refusal to enter into a Repayment Agreement for monies owed will subject the family to eviction procedures.

**Note: If the housing authority has a minimum rent greater than \$0, they must allow for repayment agreements for those tenants whose rental amount is the minimum rent and who have had their rent abated for a temporary period.**



## **TRANSFERS**

*The PHA recognizes that there are situations in which families must move, or transfer, from one unit to another, or from one property to another.*

*The following types of transfers are allowed within the scope of the PHA operation:*

- 1. Demolition, Disposition, Revitalization or Rehabilitation including RAD conversions.*
- 2. Emergency due to Physical Hazards*
- 3. Emergency due to Other Causes*
- 4. Reasonable Accommodation*
- 5. Occupancy Standards*
- 6. Split Family Transfers*
- 7. Household Composition Changes*
- 8. Incentive*
- 9. Tenant Initiated*
- 10. Transfers under the VAWA*

### ***Demolition, Disposition, Revitalization or Rehabilitation including RAD conversions***

*The PHA must provide transfers or alternative housing to families when necessary to demolish, sell, or do major revitalization or rehabilitation work at a building or site*

*The PHA may also choose to revitalize or rehabilitate distressed public housing through the use of Capital Funds or other redevelopment funding sources such as the RAD. RAD is another preservation tool that allows PHAs to improve or modernize public housing. Through RAD, a PHA may apply to convert all or a portion of its public housing stock to long-term project-based Section 8 contracts. In some instances, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601-4655) (URA), will require the PHA to provide resources to relocate displaced families. These resources may include comparable housing, payment of actual and reasonable relocation expenses, and counseling*

### ***RAD-converted Developments***

*The PHA may provide families with tenant-based assistance such as assistance under the Housing Choice Voucher (HCV) Program; transfer families to a project-based housing unit, or transfer families to other public housing units. The transfer or alternative housing arrangement must be comparable housing that meets housing quality standards (be decent, safe, and sanitary); be located in an area that is generally not less desirable than the location of the displaced persons; and include similar accommodations for persons with disabilities displaced from a unit with reasonable accommodations.*

### ***Section 18 Demolition/Disposition***

*If residents are relocated due to a demolition and/or disposition, the PHA must follow relocation requirements at 24 CFR § 970.21, and not the relocation requirements at 49 CFR part 24, which implements the URA, as amended. However, if subsequent acquisition, rehabilitation, or demolition carried out with HUD funds or carried out with other HUD-funded activities causes*

*residents to relocate, the URA may apply to those relocations. Additionally, if Community Development Block Grant (CDBG) or HOME Investment Partnerships Program funds are used in the demolition or with conversion of lower-income dwelling units to a use other than lower-income dwelling units, the project may be subject to section 104(d) of the Housing and Community Development Act of 1974, including relocation assistance and one-for-one replacement provisions under 24 CFR part 42 subpart C.*

### *Section 22 Voluntary Conversions*

*To the extent that tenants are displaced as a direct result of demolition, acquisition, or rehabilitation of real property that receives federal financial assistance through the conversion of public housing as described in the Streamlined Voluntary Conversions of Last Remaining Projects of Small Public Housing Agencies notice (Notice PIH-2019-05), the requirements of the URA, and its implementing regulations at 49 CFR part 24 apply.*

### *Emergency due to Physical Hazards*

*In certain cases, PHAs must provide an emergency transfer when there is damage to a family's unit or building, or the site poses an immediate hazard to the life, health, or safety of an occupant. If alternative accommodations are available and the PHA cannot make the necessary repairs within a reasonable amount of time, PHAs are required to provide the family with alternative housing. The family is entitled to alternative accommodations even if the tenant, household member, guest, or other covered person is responsible for the damage that caused the hazard or if a family is in the process of being evicted.*

*Examples of such unit or building conditions may include but are not limited to:*

- \*Fire damage;*
- \* A gas leak;*
- \* Lack of water or heat in the building during the winter*
- \* Toxic contamination or*
- \* Serious Water Leaks*
- \* Damages incurred to roofs or other structural elements due to a Natural Disaster*
- \* Lead Hazard reduction/remediation*

*When a PHA conducts lead hazard reduction activities in a unit, it must protect families and their belongings, which can sometimes mean transferring families temporarily. The PHA must prevent families from entering the worksite until after hazard reduction work has been completed and clearance, if required, has been achieved. In some cases, families may have to be temporarily relocated to a suitable unit that is free of lead-based paint hazards before and during the hazard reduction activities. Families are obligated to comply with these types of transfers.*

*In order for the PHA to remain compliant with its lease obligations, any condition that would produce an emergency work order would qualify a family for an emergency transfer if the repairs cannot be made within 24 hours. In emergency situations when no other appropriate public housing units are available, it is common practice for PHAs to provide families with an HCV or cover the cost of hotel accommodations until repairs are made or a transfer to alternative housing is completed.*

### ***Emergency due to Other Causes***

*A PHA may allow for a transfer to:*

- \* Alleviate a verified medical condition of a life-threatening nature;*
- \* Alleviate a threat assessed by a law enforcement professional; or*
- \* Protect members of the household from criminal activity at the property or in the neighborhood.*

### ***Reasonable Accommodation***

*PHAs may authorize reasonable accommodation transfers when a family member requires an accessible unit due to a disability. This kind of transfer may be requested for a variety of reasons, including, but not limited to:*

- \* The family's need for a ground floor unit because of mobility issues; or*
- \* The family's need for a unit with certain physical features that are not available in the current unit, and which cannot be retrofitted without undue financial and administrative burden to the PHA*

*Reasonable accommodation transfers are often tenant-initiated. PHAs will not force a family to transfer to another unit because a member of the family has a disability.*

### ***Occupancy Standards***

*Occupancy standards relate to the appropriate size and type of unit based on household composition. PHAs must ensure that the size and type of unit in which the household is living is appropriate for the household's size and needs. When household composition changes, PHAs must put the respective household on the transfer list and move them when a unit becomes available, if they are not in an appropriately sized unit.*

*If a household reports, or the PHA becomes aware of a change in household composition, then the PHA will determine whether the unit is still appropriately sized. For example:*

- \* A household may be considered over-housed for a unit when an adult child leaves the household; or*
- \* A household may become under-housed for a unit when a new child or an adult joins the household.*

*All public housing leases must include a clause wherein the tenant agrees to transfer to an appropriate size unit based on household composition, upon appropriate notice by the PHA that such a unit is available.*

### ***Split Family Transfers***

*PHAs have the option to allow very large families with two adult members to split into two separate households and transfer to two units. A PHA might offer a split family transfer if, for example, the family composition changed and now requires a seven-bedroom unit, but the PHA only has four-bedroom units available. A split family transfer is a type of occupancy standards transfer.*

### **EXAMPLES OF AN ALLOWABLE SPLIT FAMILY TRANSFER:**

*The persons who would be the original and new family head of household (HOH) must both be listed on the most recent lease. (This prohibits individuals from extending their “visits” to the family to obtain a unit);*

*\* The family must be overcrowded according to the PHA’s occupancy standards; and*

*\* The reason for the family split must be the addition of children through birth, adoption, or court-awarded custody.*

### **Household Composition Changes**

*Families are required to request PHA approval before adding any family member as an occupant of the unit, other than those entering the family by birth, adoption, or court-awarded custody. Failure on the part of the family to comply with the household composition provisions is a violation of the lease terms, for which a PHA may terminate the lease.*

*New additions to the family must be evaluated to allow the addition of a new member, other than by birth are:*

*The new member must:*

*Pass the PHA screening criteria*

*Contributes to family reunification (e.g., the return of an incarcerated parent)*

*Makes transfer to a larger sized unit necessary and if a unit is available*

*Satisfies a tenant’s request for a reasonable accommodation request*

### **Tenant Initiated**

*The PHA will consider requests for transfers that are not out of necessity, such as moving to another section of the property to be closer to family members, other neighborhoods, employment or a child’s school. These transfers will be processed on an individual basis and are subject to availability in the desired location.*

### **Transfers under the VAWA**

*In accordance with VAWA, tenants who are victims of domestic violence, dating violence, sexual assault or stalking can request an emergency transfer from the tenant’s current unit to another unit. HUD requires PHAs to adopt an Emergency Transfer Plan (ETP), based on HUD’s model ETP (form HUD-5381) and incorporates strict confidentiality measures.*

*The PHA’s ETP must allow tenants to make an internal emergency transfer under VAWA when a safe unit is immediately available; a victim determines whether the unit is safe. The plan must also describe policies for assisting tenants when a safe unit is not immediately available. Those policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.<sup>24</sup> The ETP also must describe reasonable efforts the PHA will take to assist a tenant who wishes to make an external emergency transfer when a safe unit is not immediately available.*



*A PHA may request in writing that the victim provide documentation of an occurrence of domestic violence, dating violence, sexual assault, or stalking in accordance with the regulation at 24 CFR § 5.2007. However, no other documentation may be required to qualify the tenant for an emergency transfer.*

*VAWA does not impact a PHA's authority to establish and define other transfer policies; it only requires that specific policies be established for transfers under VAWA. Please see Notice PIH 2017-08 for additional detailed guidance on VAWA emergency transfer requirements.*

***PRIORITIES AMONG TYPES OF TRANSFERS:***

*The following types of transfers will occur in order of priority:*

- 1. Emergency due to physical hazards;*
- 2. Emergency due to other causes;*
- 3. Demolition, disposition, revitalization, or rehabilitation;*
- 4. Reasonable accommodation;*
- 5. VAWA emergency transfer;*
- 6. Occupancy standards;*
- 7. Split family;*
- 8. Incentive;*
- 9. Tenant-initiated.*

***When Transfers Take Precedence Over Waiting List Admissions***

*Generally, the types of transfers that take precedence over waiting list admission may include, but are not limited to:*

- \* Emergencies;*
- \* Reasonable accommodations;*
- \* Demolition, disposition, revitalization, and rehabilitation;*
- \* Incentive; and*
- \* Occupancy standards transfers.*

***Mandatory and Optional Transfers***

*Tenants must comply with the following transfers:*

- \* Emergencies due to physical hazards;*
- \* Demolition, disposition, revitalization, and rehabilitation;*
- \* PHA-initiated occupancy standard transfers defined as mandatory in the ACOP (e.g., the family is under-housed or over-housed and there is a waiting list for that particular unit size);*  
*and*
- \* Other PHA-initiated transfers defined as mandatory.*

*However, tenants may choose to request and/or accept transfers for other circumstances including, but not limited to:*

- \*Reasonable accommodations*
- \*Emergencies due to other causes:*

- \*Incentive (if an option at your PHA).*
- \*Occupancy standards (non-mandatory)*
- \*VAWA emergencies*
- \* A split family*
- \* Tenant initiated requests*

**ELIGIBILITY FOR TRANSFERS**

*PHA has established the following eligibility criteria for optional transfers:*

- \*Tenants/household members have not engaged in criminal activity threatening the health and safety of residents and staff;*
- \* Tenant does not owe any back rent or other charges, or does not have a pattern of late payments;*
- \* Tenant does not have any outstanding housekeeping lease violations or history of damaging property; and*
- \* Tenant has the ability to get utilities turned on in the name of the head of household (applicable only to properties with tenant-paid utilities).*

**COSTS OF TRANSFERS**

*The PHA will bear the costs of the following transfers:*

- \*Initiated by the PHA for demolition, disposition, revitalization, or rehabilitation purposes*
- \*Required due to conditions that pose a physical hazard (i.e., building system failure, or other emergency conditions that cannot be repaired within 24 hours); and/or*
- \* Required as a reasonable accommodation for families with disabilities.*

*Tenants typically bear the costs associated with occupancy standards transfers, although some PHAs may choose to pay the cost of moving families to smaller units. The reasonable costs for transfers may include not only the cost of packing, moving, and unloading, but also the cost of disconnecting and reconnecting any existing resident-paid utility services (i.e., telephone and cable television). (Please read and disregard if you don't want to do this.*

- A. The PHA will maintain a list of families (by number of bedrooms) that need to be transferred.*
- B. The family name shall be placed on this list on the day the PHA becomes aware of family composition change or other circumstances requiring a change.*
- C. Families that are over housed will be given priority over families that are under housed.*

*D. Families needing special consideration because of a disability will be accommodated before under and over housed families, whenever possible.*

*E. Highest priority: Emergency and certain administrative transfers will take priority over new admissions as follows:*

*1. If the condition of the unit poses an immediate threat to the resident's life, health or safety, as determined by the PHA. Examples are:*

*a. defects hazardous to health or safety need to be repaired*

*b. verified medical problems of a life-threatening nature need to be alleviated*

*c. threat assessment by a law enforcement agency that a family member is in danger of attack by criminal element or subject to hate crimes in a particular property or neighborhood*

*2. unit is slated for modernization*

*3. individuals needing an available unit that is accessible or adapted for use by handicapped or disabled*

*F. Residents will be transferred to a dwelling unit of equal size, either within a location or site or between locations or sites only to alleviate hardships as determined by the PHA.*

*G. The PHA will not require a family residing in a unit too large for its needs to transfer into a smaller unit unless the Waiting List reflects a need for the occupied unit.*

*H. Residents will receive one offer of a transfer. Refusal of that offer without good cause may result in Lease termination. The "good cause" standard that is applicable to new admissions will also apply to transfers.*

*I. The cost of transfers to correct occupancy standards will be the responsibility of the family; all others will be the responsibility of the PHA.*



## **PET POLICY**

### **EXCLUSIONS**

#### **SERVICE AND ASSISTANCE ANIMAL EXCLUSION**

This policy does not apply to animals used to assist persons with disabilities. Service and assistance animals are allowed in all public housing facilities. Residents must ensure service and assistance animals do not pose a direct threat to the health or safety of others or cause substantial physical damage to the development, dwelling unit, or property of other residents.

For an animal to be excluded from the pet policy and be considered a service animal, the person seeking to use and live with the animal must have a disability; and the person seeking to use and live with the animal must have a disability-related need for the service or assistance the animal provides

For an animal to be excluded from the pet policy and be considered an assistance animal, there must be a person with disabilities in the household, and the family must request a reasonable accommodations request.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the person's disability.

The PHA will verify the existence of the disability and the need for the accommodation—if either is not readily apparent. Accordingly, persons seeking a reasonable accommodation for an emotional support animal will be required to provide documentation from a physician, psychiatrist, social worker, or another mental health professional that the animal provides support that alleviates at least one of the identified symptoms or effects the current disability.

In addition, the PHA is not required to provide any reasonable accommodation that would pose a direct threat to the health or safety of others. Thus, if the particular animal requested by the individual with a disability has a history of dangerous behavior, we will not accept the animal into our housing. Moreover, we are not required to make a reasonable accommodation if the presence of the assistance animal would (1) result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by a reasonable accommodation; (2) pose an undue financial and administrative burden; or (3) fundamentally alter the nature of the provider's operations.

### **PETS IN PUBLIC HOUSING**

The PHA allows for pet ownership in its developments with the written pre-approval of the Housing Authority. Residents are responsible for any damage caused by their pets, including the cost of fumigating or cleaning their units. In exchange for this right, the resident assumes full responsibility and liability for the pet and agrees to hold the PHA harmless from any claims caused by any action or inaction of the pet.

### **APPROVAL**

Residents must have the prior written approval of the Housing Authority before moving a pet into their unit. Residents must request permission on the Authorization for Pet Ownership Form, which must be fully completed before the Housing Authority will approve the request. Residents must give the Housing Authority a picture of the pet so it can be identified if it is running loose.

## **TYPES AND NUMBER OF PETS**

The PHA will allow only common household pets. This means only domesticated animals such as dogs, cats, birds, rodents (including rabbits), fish in aquariums, or turtles will be allowed in units.

Common household pets do not include reptiles (except turtles). If this definition conflicts with a state or local law or regulation, the state or local law or regulation shall govern.

All dogs and cats must be spayed or neutered before they become six months old. A licensed veterinarian must verify this fact.

Only one four-legged, warm-blooded animal (i.e., dog, cat, hamster, etc.) is allowed per unit. Such animals shall not exceed 18 inches in height and 25 pounds in weight at maturity.

Animals referenced under Prohibited Animals are not permitted even if they meet the weight and height criteria.

In the case of fish, residents may keep no more than can be maintained safely and healthily in a tank holding up to 10 gallons. Such a tank or aquarium will be counted as one pet.

Any animal deemed to be potentially harmful to the health or safety of others, including attack or fight trained dogs, will not be allowed.

## **PROHIBITED ANIMALS:**

Many animals do not meet the definition of a common household pet, and management reserves the sole right to decide regarding any such animal listed under this section. The following includes but is not limited to animals considered to be of a vicious and attacking nature or animals otherwise not traditionally kept in the home for pleasure and therefore will not be permitted on the premises of the PHA:

1. Any animal whose adult weight will exceed 25 pounds.
2. Dogs such as Pit Bulls, Rottweilers, Doberman Pinchers, German Shepherds, Bull Dogs, or breeds not permitted under state or local law or code.
3. Reptiles such as snakes, alligators, lizards, iguanas, chameleons, etc.
4. Farm animals such as chickens, pigs, cows, mules, horses, etc.
5. Wild animals such as lions, leopards, bears, tigers, wolves, etc.
6. Ferrets or other animals whose natural protective mechanisms pose a risk to small children of serious bites

## **INOCULATIONS**

To be registered, pets must be appropriately inoculated against rabies, distemper, and other conditions prescribed by state and local ordinances. They must comply with all other state and

local public health, animal control, and anti-cruelty laws, including any licensing requirements. A certification signed by a licensed veterinarian or state or local official shall be annually filed with the PHA to attest to the injections.

### **PET DEPOSIT**

A pet deposit of **\$350.00** is required when registering a pet. The deposit is refundable when the pet or the family vacates the unit, less any amounts owed due to damage beyond normal wear and tear. A separate deposit is required for each pet.

### **FINANCIAL OBLIGATION OF RESIDENTS**

Any resident who owns or keeps a pet in their dwelling unit will be required to pay for any damages caused by the pet. Also, any pet-related insect infestation in the pet owner's unit will be the pet owner's financial responsibility, and the PHA reserves the right to exterminate and charge the resident.

### **NUISANCE OR THREAT TO HEALTH OR SAFETY**

The pet and its living quarters must be maintained to prevent odors and any other unsanitary conditions in the owner's unit and surrounding areas.

Repeated substantiated complaints by neighbors or PHA personnel regarding pets disturbing the peace of neighbors through noise, odor, animal waste, or other nuisance may result in the owner having to remove the pet or move him/herself.

Pets who make noise continuously and/or incessantly for 10 minutes or intermittently for one-half hour or more to the disturbance of any person at any time of day or night shall be considered a nuisance.

### **REGISTRATION**

All pets must be registered at the following events:

Initial occupancy of tenant or pet

At annual reexamination

At a change in pet status

Registration forms are attached to this policy as Appendix one.

### **DESIGNATION OF PET AREAS**

Pets must be kept in the owner's apartment or on a leash when outside the unit (no outdoor cages may be constructed). Pets will be allowed only in designated areas on the property's grounds if the PHA designates a pet area for the particular site. Pet owners must clean up after their pets and are responsible for disposing of pet waste.

Except for assistive or support animals, no pets shall be allowed in the community room, kitchen, laundry rooms, public bathrooms, lobby, beauty shop, hallways, or office in any of our sites.

To accommodate residents who have medically certified allergic or phobic reactions to dogs, cats, or other pets, those pets may be barred from certain wings (or floors) in our development(s)/building(s). This shall be implemented based on demand for this service.

## **MISCELLANEOUS RULES**

Pets may not be left unattended in a dwelling unit for over **twelve (12)** hours. If the pet is left alone and no arrangements have been made for its care, the HA will have the right to enter the premises and take the uncared-for pet to be boarded at a local animal care facility at the total expense of the resident.

Pet bedding shall not be washed in any common laundry facilities.

Residents must take appropriate actions to protect their pets from fleas and ticks.

All dogs must wear a tag bearing the resident's name and phone number and the date of the latest rabies vaccination.

Pets cannot be kept, bred, or used for any commercial purpose.

Residents owning cats shall maintain waterproof litter boxes for cat waste. Refuse from litter boxes shall not accumulate or become unsightly or unsanitary. Litter shall be disposed of appropriately.

A pet owner shall physically control or confine their pet during the times when Housing Authority employees, agents of the Housing Authority, or others must enter the pet owner's apartment to conduct business, provide services, enforce lease terms, etc.

Suppose a pet causes harm to any person. In that case, the pet's owner shall be required to permanently remove the pet from the Housing Authority's property within 24 hours of written notice from the Housing Authority. The pet owner may also be subject to termination of their dwelling lease.

A pet owner who violates any other conditions of this policy may be required to remove their pet from the development within ten calendar days of written notice from the Housing Authority. The pet owner may also be subject to termination of their dwelling lease.

The Housing Authority's grievance procedures shall apply to all individual grievances or disputes arising out of violations or alleged violations of this policy.

## **VISITING PETS**

Pets that meet the size and type criteria outlined above may visit the projects/buildings where pets are allowed for two weeks without PHA approval. Tenants who have visiting pets must abide by the conditions of this policy regarding health, sanitation, nuisances, and the peaceful enjoyment of others. If visiting pets violate this policy or cause the tenant to break the lease, the tenant will be required to remove the visiting pet.



## **RESPONSIBLE PERSON**

A “Responsible Person” is any family member at least 18 years of age with the physical stamina and mental alertness to keep the pet under control and must be:

1. Familiar with the pet’s temperament, disposition, and behavior patterns.
2. Aware of and willing to abide by the pet rules and lease provisions.
3. Able and willing to provide proper nourishment, medical attention, and general good care and treatment of the pet.

## **REMOVAL OF PETS**

The PHA, or an appropriate community authority, shall require the removal of any pet from a project if the pet's conduct or condition is determined to be a nuisance or threat to the health or safety of other occupants of the project or of other persons in the community where the project is located.

In the event of illness or death of a pet owner, or in the case of an emergency which would prevent the pet owner from adequately caring for the pet, the PHA has permission to call the emergency caregiver designated by the resident or the local Pet Law Enforcement Agency to take the pet and care for it until family or friends would claim the pet and assume responsibility for it. Any expenses incurred will be the responsibility of the pet owner.

*APPENDIX 1*

REGISTRATION FORM

**Appendix 1  
Pet Agreement**

1. Management considers the keeping of pets a severe responsibility and risk to each resident in the apartment. If you do not adequately control and care for a pet, you will be held liable if it causes any damage or disturbs other residents.
2. **Conditional Authorization for Pet.** You may keep the pet described below in the apartment until Dwelling Lease is terminated. Management may terminate this authorization sooner if your right of occupancy is lawfully terminated or if your pet, your guests, or any member of your household violate any of the rules contained in Westerly Housing Authority's Pet Policy or this Agreement.
3. **Pet Fee.** The Pet Fee will be \$ 350.00. The Pet Fee is a one-time, non-refundable charge.
  - a. If at any time in the future, this pet is replaced by another animal, another one-time fee may be charged for that animal.
  - b. This fee will be used to pay reasonable expenses directly attributable to the pet's presence in the complex, including but not limited to the cost of repairs to and fumigation of the apartment.
4. **Liability Not Limited.** The fee under this Pet Agreement does not limit the resident's liability for property damages, cleaning, deodorization, de-fleaing, replacements, or personal injuries.
5. **Description of Pet.** You may keep only one pet as described below. The pet may not exceed eighteen (18) inches in height and Twenty five (25) pounds in weight. You may not substitute other pets for this one without amending this agreement.

Pet's Name \_\_\_\_\_ Type \_\_\_\_\_

Breed \_\_\_\_\_ Color \_\_\_\_\_ Weight \_\_\_\_\_ Age \_\_\_\_\_

Housebroken? \_\_\_\_\_ City of License \_\_\_\_\_ License No. \_\_\_\_\_

Date of last Rabies shot \_\_\_\_\_

Name, address and phone number of person able to care for pet in case of resident's permanent or temporary inability to care for animals

Name \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

Attach Photo

**Appendix 2**

**Pet Policy Certification**

I have read, fully understand, and will abide by the rules and regulations in the PHA Pet Policy and this Pet Agreement.

By \_\_\_\_\_

Title \_\_\_\_\_

Housing Authority of the City of Westerly Housing Authority.

Resident

Resident \_\_\_\_\_

Resident \_\_\_\_\_

**Appendix 3  
Pet Policy Rules Violation Notice**

DATE:	
TIME: (IF DELIVERED)	A.M. / P.M.

TO:

NAME OF RESIDENT:	
STREET ADDRESS:	
CITY, STATE, ZIP CODE	
PET NAME OR TYPE:	

This notice at this moment informs you of the violation of the following rules:

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The factual basis for determination of violation:

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As the pet owner, you have ten (10) calendar days from the date shown on this notice (date notice delivered or mailed) to correct the violation or make a written request for a meeting to discuss the violation.

As the pet owner, you are entitled to be accompanied by another person of your choice at the meeting.

Failure to correct the violation, request a meeting, or appear at the requested meeting may result in the initiation of procedures to terminate your tenancy.

Executive Director

**APPENDIX 4**

LETTERS REQUESTING REASONABLE ACCOMMODATION AND VERIFICATION  
*Sample of Letter to Request Reasonable Accommodation*

[DATE]

[NAME OF BUILDING MANAGER]  
[ADDRESS]

Re: Reasonable Accommodation for my disability

Dear [BUILDING MANAGER NAME]:

I live at [ADDRESS] in [UNIT NUMBER] and have lived there since [DATE]. I am a qualified individual with a disability, defined by the Fair Housing Amendments Act of 1988.

Our building's rules state [XXX]. Because of my disability, I need the following accommodations: [LIST ACCOMMODATIONS]. A medical provider has prescribed this accommodation for my disability. I want to meet with you to discuss these and any other accommodations that will enable me to have an equal opportunity to live in and enjoy this residence.

Please let me know what, if any, additional information you need from my health care provider to understand better my disability and the limitations it imposes.

Under the Fair Housing Amendments Act, it is unlawful discrimination to deny a person with a disability a reasonable accommodation of an existing building rule or policy if such capacity may be necessary to afford such person full enjoyment of the premises.

Please keep this request for accommodation confidential, as required by federal law. Please get in touch with me within the next ten days to discuss this critical issue. I look forward to your response and appreciate your attention to this matter.

Sincerely,  
*Signature*

Resident Name

*Sample letter for Companion Animal*

DATE

NAME OF PROFESSIONAL (therapist, physician, psychiatrist, rehabilitation counselor)  
ADDRESS

Dear [HOUSING AUTHORITY/LANDLORD]:

[NAME OF TENANT] is my patient and has been under my care since [DATE]. I am intimately familiar with their history and the functional limitations imposed by their disability. He/She/They meet the definition of disability under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973.

Due to mental illness, [FIRST NAME] has certain limitations regarding [SOCIAL INTERACTION/COPING WITH STRESS/ANXIETY, ETC]. To help alleviate these difficulties and to enhance his/her ability to live independently and to fully use and enjoy the dwelling unit you own and/or administer, I am prescribing an emotional support animal that will assist [FIRST NAME] in coping with his/her disability.

I am familiar with the voluminous professional literature concerning the therapeutic benefits of assistance animals for people with disabilities such as that experienced by [FIRST NAME]. Upon request, I will share citations to relevant studies. I would be happy to answer other questions you may have concerning my recommendation that [FULL NAME OF TENANT] have an emotional support animal. Should you have additional questions, please do not hesitate to contact me.

Sincerely,

*Signature*

[NAME OF PROFESSIONAL]





## **UTILITIES**

*All utility service shall be individually metered to residents, either through provision of retail service to the residents by the utility supplier or through the use of check meters, unless:*

*(1) Individual metering is impractical, such as in the case of a central heating system in an apartment building;*

*(2) Change from a master metering system to individual meters would not be financially justified based upon a benefit/cost analysis; or*

*(3) Check metering is not permissible under State or local law, or under the policies of the particular utility supplier or public service commission.*

*(b) If check metering is not permissible, retail service shall be considered. Where check metering is permissible, the type of individual metering offering the most savings to the PHA shall be selected.*

### ***Resident allowances for Utilities***

*(a) In rental units for which utilities are furnished by the PHA but there are no checkmeters to measure the actual utilities consumption of the individual units, residents shall be subject to charges for consumption by resident-owned major appliances, or for optional functions of PHA-furnished equipment, in accordance with 24 CFR § 965.502(e) and 965.506(b), but no utility allowance will be established.*

### ***Establishment of utility allowances***

*(a) PHAs shall establish allowances for PHA-furnished utilities for all checkmetered utilities and allowances for resident-purchased utilities for all utilities purchased directly by residents from the utilities suppliers.*

*(b) The PHA shall maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by residents.*

*(c) The PHA shall give notice to all residents of proposed allowances, scheduled surcharges, and revisions thereof. Such notice shall be given, in the manner provided in the lease or homebuyer agreement, not less than 60 days before the proposed effective date of the allowances or scheduled surcharges or revisions; shall describe with reasonable particularity the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; shall notify residents of the place where the PHA's record maintained in accordance with paragraph (b) of this section is available for inspection; and shall provide all residents an opportunity to submit written*

*comments during a period expiring not less than 30 days before the proposed effective date of the allowances or scheduled surcharges or revisions. Such written comments shall be retained by the PHA and shall be available for inspection by residents.*

*(d) Schedules of allowances and scheduled surcharges shall not be subject to approval by HUD before becoming effective, but will be reviewed in the course of audits or reviews of PHA operations.*

*(e) The PHA's determinations of allowances, scheduled surcharges, and revisions thereof shall be final and valid unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.*

*Separate allowances shall be established for each utility and for each category of dwelling units determined by the PHA to be reasonably comparable as to factors affecting utility usage.*

*(a) **PHA-furnished utilities.** Allowances will normally be established on a quarterly basis; however, residents may be surcharged on a monthly basis. The allowances established may provide for seasonal variations.*

*(b) **Resident-purchased utilities.** Monthly allowances shall be established. The allowances established may provide for seasonal variations*

#### **Utility Allowance Standards.**

*(a) The objective of a PHA in designing methods of establishing utility allowances for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.*

*(b) Allowances for both PHA-furnished and resident-purchased utilities shall be designed to include such reasonable consumption for major equipment or for utility functions furnished by the PHA for all residents (e.g., heating furnace, hot water heater), for essential equipment whether or not furnished by the PHA (e.g., range and refrigerator), and for minor items of equipment (such as toasters and radios) furnished by residents.*

*(c) The complexity and elaborateness of the methods chosen by the PHA, in its discretion, to achieve the foregoing objective will depend upon the nature of the housing stock, data available to the PHA and the extent of the administrative resources reasonably available to the PHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances.*

*(d) In establishing allowances, the PHA shall take into account relevant factors affecting consumption requirements, including:*

*(1) The equipment and functions intended to be covered by the allowance for which the utility will be used. For instance, natural gas may be used for cooking, heating domestic water, or space heating, or any combination of the three;*

*(2) The climatic location of the housing projects;*

*(3) The size of the dwelling units and the number of occupants per dwelling unit;*

*(4) Type of construction and design of the housing project;*

*(5) The energy efficiency of PHA-supplied appliances and equipment;*

*(6) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total resident payment;*

*(7) The physical condition, including insulation and weatherization, of the housing project;*

*(8) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather; and*

*(9) Temperature of domestic hot water.*

*(e) If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or checkmeters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning, the PHA shall not include air conditioning in the utility allowances. For systems that offer residents the option to choose air conditioning but cannot be checkmetered, residents are to be surcharged in accordance with 24 CFR § 965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible.*

***Utility Allowance Surcharges for Excess Consumption of PHA furnished utilities:***

*(a) For dwelling units subject to allowances for PHA-furnished utilities where checkmeters have been installed, the PHA shall establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption, and shall be based on the PHA's average utility rate. The basis for calculating such surcharges shall be described in the PHA's schedule of allowances. Changes in the dollar amounts of surcharges based directly on changes in the PHA's average utility rate shall not be subject to the advance notice requirements of this section.*

*(b) For dwelling units served by PHA-furnished utilities where checkmeters have not been installed, the PHA shall establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to*

*resident-owned major appliances or to optional functions of PHA-furnished equipment. Such surcharge schedules shall state the resident-owned equipment (or functions of PHA-furnished equipment) for which surcharges shall be made and the amounts of such charges, which shall be based on the cost to the PHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.*

#### ***Review and revision of Allowances***

*(a) Annual review. The PHA shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in 24 CFR § 965.505, shall establish revised allowances. The review shall include all changes in circumstances (including completion of modernization and/or other energy conservation measures implemented by the PHA) indicating probability of a significant change in reasonable consumption requirements and changes in utility rates.*

*(b) Revision as a result of rate changes. The PHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances were based. Adjustments to resident payments as a result of such changes shall be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective. Such rate changes shall not be subject to the 60 day notice requirement of 24CFR § 965.502(c).*

#### ***Individual Relief***

*Requests for relief from surcharges for excess consumption of PHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for resident-purchased utilities, may be granted by the PHA on reasonable grounds, such as special needs of elderly, ill or disabled residents, or special factors affecting utility usage not within the control of the resident, as the PHA shall deem appropriate. The PHA's criteria for granting such relief, and procedures for requesting such relief, shall be adopted at the time the PHA adopts the methods and procedures for determining utility allowances. Notice of the availability of such procedures (including identification of the PHA representative with whom initial contact may be made by residents), and the PHA's criteria for granting such relief, shall be included in each notice to residents given in accordance with 24 CFR § 965.502(c) and in the information given to new residents upon admission.*

## 1. COMMUNITY SERVICE AND SELF-SUFFICIENCY REQUIREMENT

### GENERAL

To be eligible for continued occupancy, each adult family member must either (1) contribute eight hours per month of community service (not including political activities), (2) participate in an economic self-sufficiency program, or (3) perform eight hours per month of joint activities as previously described unless they are exempt from this requirement. The eight hours of activity may be completed at eight hours each month or aggregated across a year, as long as 96 hours are completed by each annual certification.

### EXEMPTIONS

*The following adult family members of tenant families are exempt from this requirement:*

- A. *Family members who are 62 or older.*
- B. *Family members who are:*
  - 1. *blind or disabled as defined under 216(I)(1) or 1614 of the Social Security Act (42 U.S.C. 416(I)(1), Section 1382(c)) and who certifies that because of this disability, they are unable to comply with the community service requirements;*
  - or
  - 2. *Family members who are the primary caregiver of such an individual.*
- C. *Family members engaged in work activities for at least 30 hours per week:*
  - 1. *Unsubsidized employment;*
  - 2. *Subsidized private-sector employment;*
  - 3. *Subsidized public-sector employment;*
  - 4. *Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;*
  - 5. *On-the-job-training;*
  - 6. *Job search;*
  - 7. *Community service programs;*
  - 8. *Vocational educational training (not to exceed 12 months concerning any individual);*
  - 9. *Job-skills training directly related to employment;*

- 10. *Education directly related to employment in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency; and*
- 11. *Satisfactory attendance at secondary school or in the course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate.*
- D. *Able to meet requirements under a State program funded under Part A of Title IV of the Social Security Act (42 U.S.C. Section 601 et seq.) or any other welfare program in our State, including a State-administered Welfare-to-Work program; or*
- E. *A member of a family receiving assistance, benefits, or services under a State program funded under Part A of Title IV of the Social Security Act (42 U.S.C. Section 601 et seq.), or under any other welfare program of our State (HUD has determined that the Supplemental Nutrition Assistance Program (SNAP) qualifies as a welfare program of the state. Therefore, if a tenant is a member of a family receiving assistance under SNAP and has been found by the State to be in compliance with the program requirements, that tenant is exempt from the CSSR, including a State-administered Welfare-to-Work program, and has not been found by the State or other administering entity to be in non-compliance with such a program.*
- F. *Members of a NPHOI family do not have to comply with the Community Services Activities or Self-Sufficiency Work Activities.*

**NOTIFICATION OF THE REQUIREMENT**

*The PHA shall identify all adult family members who are not exempt from the community service requirement at initial occupancy and at each annual reexamination.*

*The PHA shall notify all such family members of the community service requirement and the categories of individuals exempt from the requirement. The notification will allow family members to claim and explain an exempt status in writing. The PHA shall verify such claims. If a resident disagrees with the PHA's determination, they can appeal by following the Grievance Policy. Changes in the exempt or non-exempt status of a resident shall be reported by the resident to the PHA within ten (10) calendar days of the change.*

*At lease execution or re-examination, all adult members (18 or older) of a public housing resident family must:*

- A. *Provide all requested documentation, if applicable, that they qualify for an exemption; (Documentation provided by the tenant will be used (and verified if necessary) by the PHA to determine whether the tenant is exempt from the CSSR), and*

- B. *Sign a certification that they have received and read the policy and understand that, if they are not exempt, failure to comply with the community service requirement will result in non-renewal of their lease, per 24 CFR 966.4(1)(2)(iii)(D).*

*When a non-exempt person becomes exempt, it is their responsibility to report this to the PHA and provide documentation. When an exempt person becomes non-exempt, it is their responsibility to report this to the PHA as soon as possible.*

*For families paying a flat rent, the obligation begins on the date their annual reexamination would have been effective had an annual reexamination taken place. It will also advise them that failure to comply with the community service requirement will result in ineligibility for continued occupancy at the time of any subsequent annual reexamination.*

### ***VOLUNTEER OPPORTUNITIES***

*Eligible community service activities include, but are not limited to, serving at:*

- A. *Local public or non-profit institutions, such as schools, Head Start Programs, before- or after-school programs, childcare centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult day care programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing);*
- B. *Non-profit organizations serving PHA residents or their children, such as: Boy or Girl Scouts, Boys or Girls Club, 4-H Clubs, Police Activities League (PAL), organized children's recreation, mentoring, or education programs, Big Brothers or Big Sisters, Garden Centers, community clean-up programs, beautification programs;*
- C. *Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels;*
- D. *Public or non-profit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts;*
- E. *PHA housing to improve grounds or provide gardens (so long as such work does not alter the PHA's insurance coverage), or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board, outreach and assistance with PHA-run self-sufficiency activities including supporting computer learning centers; and*
- F. *Care for the children of other residents so parents may volunteer.*
- G. *Volunteering for PHA community watch programs and building monitoring.*

H. *Volunteering for community outreach or awareness activities for the PHA, nonprofits, or other organizations.*

I. *Participating and assisting with resident council activities.*

*To facilitate easier documentation of the community service provided, residents shall work exclusively for non-profits or a governmental agency. Any required court-ordered community service or probation-based work shall not count towards a resident's required 8 hours per month of community service.*

*Eligible self-sufficiency activities include, but are not limited, to:*

A. *Job readiness or job training while not employed;*

B. *Training programs through local One-Stop Career Centers, Workforce Investment Boards (local entities administered through the U.S. Department of Labor), or other training providers;*

C. *Higher education (junior college or college);*

D. *Trade Schools Apprenticeships (formal or informal);*

E. *Substance abuse or mental health counseling;*

F. *Reading, financial and/or computer literacy classes;*

G. *English as a Second Language and/or English proficiency classes;*

H. *Budgeting and credit counseling.*

*The PHA will try to coordinate with social service agencies, local schools, and the Human Resources Office in identifying a list of volunteer community service positions.*

*Together with the resident advisory councils, the PHA may create volunteer positions such as hall monitoring, litter patrols, and supervising and record-keeping for volunteers.*

### ***THE PROCESS***

*Upon admission and each annual reexamination thereafter, the PHA will do the following:*

A. *Provide a list of available volunteer opportunities to the family members.*

B. *Provide information about obtaining suitable volunteer positions.*



- C. *Provide a volunteer timesheet to the family member. Instructions for the timesheet require the individual to complete the form and have a supervisor date and sign for each work period.*
- D. *Assign family members to a volunteer coordinator who will assist the family members in identifying appropriate volunteer positions and in meeting their responsibilities. The volunteer coordinator will track the family member's progress monthly and meet with the family member as needed to encourage compliance.*

*At each regularly scheduled rent re-examination, each non-exempt family member will present a signed certification on a form provided by the PHA of CSSR activities performed over the previous twelve (12) months. The PHA will obtain third-party verification of CSSR completion administered through outside organizations.*

*The Statement will include:*

- A. *A statement certifying that the resident has completed the number of hours required and the statement is subject to penalties of perjury.*
- B. *A description of the activity that the resident has completed.*
- C. *The name, address, and contact information of the person/organization where/which activity was completed.*

#### ***NOTIFICATION OF NON-COMPLIANCE WITH COMMUNITY SERVICE REQUIREMENT***

*Suppose a family member is found to be non-compliant at re-examination. In that case, they and the Head of Household will sign an agreement with the WHA authority to make up the deficient hours over the next 12-month period or certify that the non-compliant family member is no longer in the household.*

*The PHA will notify any family found to be in noncompliance with the following:*

- A. *The family member(s) has been determined to be in noncompliance;*
- B. *That the determination is subject to the grievance procedure, a right to be represented by counsel, and the opportunity to any available judicial remedy; and*
- C. *That, unless the family member(s) enter into a written work-out agreement, the lease will not be renewed.*

#### ***OPPORTUNITY FOR A CURE***

*The PHA will offer the family member(s) the opportunity to enter into a work-out agreement before the anniversary of the lease. The contract shall state that the family member(s) agrees to enter into an economic self-sufficiency program or contribute to community service for as many hours as needed to comply with the requirement over the past 12-month period. It will state the number of hours that the family member is deficient. The cure shall occur over the 12 months beginning with*

*the date of the agreement, and the resident shall at the same time stay current with that year's community service requirement. The first hours a resident earns go toward the recent commitment until the current year's commitment is made.*

*The volunteer coordinator will assist the family member in identifying volunteer opportunities and will track compliance every month.*

*Suppose any applicable family member does not accept the terms of the agreement, does not fulfill their obligation to participate in an economic self-sufficiency program, or falls behind in their obligation under the agreement to perform community service. In that case, the PHA shall take action to terminate the lease unless the non-compliant family member no longer lives in the unit.*

### ***PROHIBITION AGAINST REPLACEMENT OF AGENCY EMPLOYEES***

*In implementing the service requirement, the PHA may not substitute community service or self-sufficiency activities performed by residents for work ordinarily performed by its employees or replace a job at any location where residents perform activities to satisfy the service requirement.*

**Attachment A**

**Community Services and Self-Sufficiency Requirement (CSSR) Certification  
For Non-Exempt Individuals**

**Initial Program Participation**

Date: \_\_\_\_\_

Participant Name: \_\_\_\_\_

I have received and read the Community Services and Self Sufficiency Requirement (CSSR) Policy. I understand that as a resident of WHA, I am required by law to contribute 8 hours per month (96 hours over the course of a year) of community service or participate in an economic self-sufficiency program. I further understand that if I am not exempt, failure to comply with CSSR is grounds for lease nonrenewal. My signature below certifies that I received notice of this requirement at the time of initial program participation.

Signature: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**Attachment B**

**Community Services and Self-Sufficiency Requirement (CSSR) Certification  
For Non-Exempt Individuals**

**Recertification**

Date: \_\_\_\_\_

Participant Name: \_\_\_\_\_

I understand that as a resident of public housing, I am required by law to contribute 8 hours per month (96 hours over the course of a year) of community service or participate in an economic self-sufficiency program.

Signature: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**Attachment C**

**Community Service and Self Sufficiency Requirement (CSSR)  
Exemption Certification**

I certify that I am eligible for an exemption from the CSSR for the following reason:

- I am 62 or older
- I have a disability which prevents me from working  
*(Certification of Disability Form will serve as documentation)*
- I am the caretaker of a disabled person
- I am working at least 30 hours per week (see CSSR Policy for activities)  
*(Employment Verification form will serve as documentation)*
- I am receiving and am compliant with requirements of the Temporary Assistance for Needy Families (TANF)  
*(Must provide verification from the funding agency that you are complying with job training or work requirements)*

- I am receiving and am compliant with requirements of the Supplemental Nutrition Assistance Program (SNAP)  
*(Must provide verification from the funding agency that you are complying with job training or work requirements)*

- I am receiving assistance, benefits, or services under another welfare program of the State (including a State-administered Welfare-to-Work program) and am in compliance with such program's requirements.  
*(Must provide verification from the funding agency that you are complying with job training or work requirements)*

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

**Attachment D**

**Primary Caretaker Certification**

I, \_\_\_\_\_, understanding the penalties under the law for misrepresenting facts to a government agency of the United States, do hereby certify that I am the primary caretaker for \_\_\_\_\_.

I understand that, as such, I am entitled to an exemption from the Community Service and Self Sufficiency Requirement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Attachment E**

**Record and Certification of CSSR Activities**

Resident Name: \_\_\_\_\_ Social Security # \_\_\_\_\_

Date of Activity	Type of Service OR activity	Type of Training program	Type of Education Program	# of hours	Name of Company/Organization	Signature of Supervising Official





**Attachment G**

**Notification of Noncompliance**

Date: \_\_\_\_\_

Dear:

Please be advised that WHA has not received documentation evidencing completion of 96 hours of community service for the following members of your family:

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All non-exempt adult members of the family must complete the community service hours as a part of the annual recertification process. If you feel one or more of the above listed family members may be eligible for an exemption, please see the management office.

You may also be eligible to enter into an agreement to complete deficient service hours.

In the event service hours have not been completed for all adult members, you may be issued a 30-day notice of lease termination. Your cooperation in this matter is needed to assist in preserving your housing opportunity.

Sincerely,

**Attachment H**

**CSSR Work-Out Agreement**

In accordance with the provisions of the WHA's Community Service and Self-Sufficiency Requirement (CSSR) Policy, I/We agree to complete all deficient service hours over the next 12-month period ending \_\_\_\_\_.

I/We understand that the WHA may issue a 30-day notice of lease termination if the service hour requirements of your lease are not brought into compliance by \_\_\_\_\_.

I/we understand what volunteer work qualifies as community service and what types of programs qualify for self-sufficiency participation.

\_\_\_\_\_  
Head of Household

\_\_\_\_\_  
Date

\_\_\_\_\_  
Other Adult Family Member

\_\_\_\_\_  
Date

\*\*\*\*\*

WHA USE ONLY

APPROVED BY: \_\_\_\_\_

\_\_\_\_\_  
Date

Schedule to Make Up Deficient Hours

HOURS DEFICIENT	NUMBER OF MONTHS TO COMPLETE
8	1
16	2
24	3
32	4
40	5
48	6
56	7
64	8
72	9
80	10
88	11
96	12



## ***VIOLENCE AGAINST WOMEN ACT (VAWA) POLICY***

### ***I. PURPOSE AND APPLICABILITY***

The purpose of this policy is to implement the requirements of the Violence Against Women Act (VAWA) with respect to the responsibilities of the PHA regarding domestic violence, dating violence, sexual assault, and stalking. This policy shall be applicable to all of the federally subsidized housing programs administered by the WHA and shall be part of the Public Housing Admissions and Continued Occupancy Policy (ACOP) by reference. Protections under this policy are available to all victims regardless of sex, gender identity, or sexual orientation and will be applied consistently with all nondiscrimination and fair housing requirements.

### ***II. GOALS AND OBJECTIVES***

- A. Maintaining compliance with all applicable legal requirements imposed by VAWA*
- B. Ensuring the physical safety of victims of actual or threatened domestic violence, dating violence, sexual assault, and stalking*
- C. Providing and maintaining housing opportunities for victims of domestic violence, dating violence, sexual assault, and stalking*
- D. Creating and maintaining collaborative arrangements between the PHA, law enforcement authorities, victim service providers and others to promote the safety and well-being of victims of actual or threatened domestic violence, dating violence, sexual assault, and stalking*
- E. Taking appropriate action in response to an incident or incidents of domestic violence, dating violence, sexual assault and stalking affecting individuals assisted by the PHA.*

### ***III. DEFINITIONS***

- A. DOMESTIC VIOLENCE. —The term ‘domestic violence’ includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who:*

- (1) is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;*
- (2) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;*
- (3) shares a child in common with the victim; or*

*(4) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction*

*B. Spouse or Intimate Partner - includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.*

*C. Dating Violence - violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship is determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.*

*D. Sexual Assault - is any type of sexual contact or behavior that occurs without the explicit consent of the recipient, including when the individual lacks capacity to consent*

*E. Stalking - engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's individual safety or the safety of others, or suffer substantial emotional distress*

*F. Affiliated individual - with respect to an individual, means*

*(1) a spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or*

*(2) any other person living in the household of that individual*

*G. Perpetrator - a person who commits acts of domestic violence, dating violence, sexual assault, or stalking against a victim*

*H. VAWA Self Petitioner - refers to noncitizens who claim to be victims of "battery or extreme cruelty." Battery or extreme cruelty includes domestic violence, dating violence, sexual assault, and stalking. VAWA allows these noncitizens to self-petition for Lawful Permanent Resident (LPR) status without the cooperation of or knowledge of their abusive relative.*

*I. ECONOMIC ABUSE.—The term 'economic abuse', in the context of domestic violence, dating violence, and abuse in later life, means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:*

*A) restrict a person's access to money, assets, credit, or financial information;*

*(B) unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or*

*(C) exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.*

*J. TECHNOLOGICAL ABUSE—The term 'technological abuse' means an act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology, including but not limited to: internet enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.*

#### **IV. NOTIFICATIONS PROVIDED**

*A. All applicants and tenants of all PHA Housing Programs will be provided HUD-5380, "Notification of Occupancy Rights Under the Violence Against Women Act (VAWA)" and HUD-5382, "Certification of Domestic Violence,*

*B. Dating violence, Sexual Assault, or Stalking and Alternate Documents" at the following times:*

*(1) at time of denial of assistance or admission*

*(2) at time of providing of assistance or admission*

*(3) at any eviction or termination*

*(4) at recertification or lease renewal*

*C. These forms will be provided in the applicable language, if necessary, in accordance with Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency).*

#### **V. ADMISSIONS AND SCREENING**

*A. Non-Denial of Assistance - The PHA will not deny assistance or admission to any person because that person is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, provided that such person is otherwise qualified for admission.*

*B. Mitigation of Disqualifying Information*

*(1) An applicant for assistance whose history includes incidents in which the applicant was a victim of domestic violence, may request that the PHA take such*

*information into account in mitigation of potentially disqualifying information, such as poor credit history or previous damage to a dwelling.*

- (2) *If requested by an applicant to take such mitigating information into account, the PHA shall be entitled to conduct such inquiries as are reasonably necessary to verify the claimed history of domestic violence and its probable relevance to the potentially disqualifying information.*
- (3) *The PHA will not disregard or mitigate potentially disqualifying information if the applicant household includes a perpetrator of a previous incident or incidents of domestic violence.*

## **VI. TERMINATION OF TENANCY OR ASSISTANCE**

### **A. VAWA Protections**

- (1) *A tenant may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if*
  - a. *the criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant and*
  - b. *the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.*
- (2) *An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be considered as a serious or repeated violation of the lease by the victim or threatened victim or good cause for terminating the assistance, tenancy or occupancy rights of the victim or threatened victim of such incident.*

### **B. Limitations of VAWA Protections**

- (1) *Nothing in the above section limits the authority of the PHA to comply with a court order with respect to the rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking, or the distribution or possession of property among members of a household.*
- (2) *Nothing in the above section limits any available authority of the PHA to evict or terminate assistance to a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking. However, the PHA will not hold to a more demanding standard, a tenant or an affiliated individual who is or has been a victim of or domestic violence, dating violence, sexual assault, or stalking.*



- (3) *Nothing in the above section limits the authority of the PHA to evict or terminate from assistance any tenant or lawful applicant if*
  - a. *PHA can demonstrate an actual and imminent threat to other tenants or to those employed at or providing service to the property, if the tenant is not evicted or terminated from the assistance, and*
  - b. *no other actions that could be taken to reduce the threat have been successful, including transferring the victim to a different unit, barring the perpetrator from the property, involving law enforcement, or seeking other legal remedies to prevent the perpetrator from acting on a threat.*

**VII. VERIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

- A. *Requirement for Verification. Subject only to waiver as provided in paragraph D below, the PHA shall require verification in all cases where an individual requests protection against an action involving domestic violence, dating violence, sexual assault, or stalking. Verification may be accomplished in one of three ways:*
  - (1) *Completing HUD-5382, "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking"*
  - (2) *Other documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the side effects of the abuse, described in such documentation. The professional providing the documentation must sign and attest under penalty of perjury that the incident or incidents in question are bona fide and meet the requirements of the applicable definition set forth in this policy.*
  - (3) *Police or court record - provided to the PHA by federal, state, tribal, or local police or court record describing the incident or incidents in question.*
- A. *Time Allowed. An individual who claims protection against adverse action based on an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking, and who is requested by the PHA to provide verification, must provide such verification within 14 business days after receipt of the request for verification. Failure to provide verification, in proper form within such time will result in loss of protection under VAWA and this policy against a proposed adverse action.*
- B. *If the PHA receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming*

*one or more of the other petitioning household members as the abuser or perpetrator), the PHA has the right to request that the tenant provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. Failure to provide third-party documentation where there is conflicting evidence will result in loss of protection under VAWA and this policy against a proposed adverse action.*

- C. Waiver of verification requirement. With respect to any specific case, the PHA may waive the above-stated requirements for verification and provide the benefits of this policy based on the victim's statement or other corroborating evidence. Such waiver may be granted in the sole discretion of the Executive Director or President/CEO. Any such waiver must be in writing. Waiver in a particular instance or instances shall not operate as precedent for, or create any right to, waiver in any other case or cases, regardless of similarity in circumstances.*

#### **VIII. NON-CITIZEN SELF-PETITIONER VERIFICATION**

- A. Financial assistance to ineligible noncitizens will not be denied while verifying immigration status.*
- B. Self-petitioners can indicate that they are in "satisfactory immigration status" when applying for assistance or continued assistance. "Satisfactory immigration status" means an immigration status which does not make the individual ineligible for financial assistance. After verifying such immigration status in the Department of Homeland Security (DHS) Systematic Alien Verification for Entitlements (SAVE) System, PHAs will make a final determination as to the self-petitioner's eligibility for assistance.*
- C. In order to qualify, the noncitizen victim must have been battered or subjected to extreme cruelty by their spouse or parent, who is a U.S. citizen or LPR (Lawfully Permanent Resident).*
- D. Once a PHA receives a self-petition (INS Form I-360 or I-130) or INS Form 797, PHA will not request any additional information from the VAWA self-petitioner, other than PHA is required using the SAVE system to complete the verification.*
- E. When a PHA receives a self-petition or INS Form 797 Notice of Action, the PHA will initiate verification in the SAVE System*
- F. Final determination from the SAVE System. PHA will receive one of two confirmations:*

(1) *the VAWA self-petition is verified, in which case the applicant is immediately eligible for housing and no evidence of battery or extreme cruelty shall be requested or collected;*

(2) *the I-130 is verified, in which case the petitioner submitting a family-based visa petition must provide to the PHA any evidence of "battery or extreme cruelty."*

G. *Housing assistance and all other VAWA protections will be granted to the self-petitioner throughout the verification process until a final determination of LPR (Lawful Permanent Resident) status is made. If the final determination is to deny the VAWA self-petition or LPR petition, the PHA must alert the petitioner and take actions to terminate voucher assistance or evict the petitioner from public housing in accordance with the existing public housing requirements.*

## **IX. EMERGENCY TRANSFER PLAN**

### **I. Eligibility for Transfer**

*In accordance with the Violence Against Women Act (VAWA) the PHA allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit, regardless of sex, gender identity, or sexual orientation. The ability of the PHA to honor such request for tenants currently receiving assistance may depend upon:*

*A. a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and*

*II. on whether the PHA has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.*

### **B. Requesting a transfer**

(1) *To request an emergency, transfer the tenant shall notify the PHA office and submit a written request for a transfer (HUD-5383). The PHA will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer should include either:*

*a. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under the PHA's program; or*

*b. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.*

(1) *The PHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. However, the PHA will act as*

*quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit.*

- (2) If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit.*
- (3) If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. The PHA may be unable to transfer a tenant to a particular unit if the tenant cannot establish eligibility for that unit.*
- (4) In cases where the PHA determines that the family's decision to move out of the PHA housing was reasonable under the circumstances, the PHA may wholly or partially waive rent payments and any rent owed shall be reduced by the amounts of rent collected for the remaining lease term from a tenant subsequently occupying the unit.*
- (5) Portability - An HCV-assisted tenant will not be denied portability to a unit located in another jurisdiction so long as the tenant has complied with all other requirements of the Housing Choice Voucher program and has moved from the unit in order to protect the health or safety of an individual member of the household who is or has been the victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believes that the tenant or other household member will be imminently threatened by harm from further violence if the individual remains in the present dwelling unit.*
- (6) If the PHA has no safe and available units for which a tenant who needs an emergency is eligible, the PHA will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move.*
- (7) At the tenant's request, the PHA will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.*

#### *A. Safety and Security of Tenants*

- (1) Confidentiality - The PHA will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives the PHA written permission to release the information on a time limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding*

*or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant.*

- (2) Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe.*
- (3) Tenants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).*
- (4) Tenants who have been victims of sexual assault may call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>.*
- (5) Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.*

## **X. OTHER REMEDIES**

### **A. Lease Bifurcation**

- (1) the PHA may bifurcate a lease; that is, remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to that member who engages in criminal activity related to of domestic violence, dating violence, sexual assault, or stalking. In such a case, it does not matter that the perpetrator was a signatory to the lease and the victim is allowed to stay in the unit or on the program.*
- (2) In removing the perpetrator from the household, the PHA will follow all federal, state and local eviction procedures.*
- (3) If the evicted person was the eligible person in the household, the remaining tenants will be given 90 days from the date of bifurcation of the lease to:
  - a. establish eligibility for the program they are currently under*
  - b. establish eligibility under another program, or**

*c. find alternative housing*

*A. Efforts to promote housing stability*

*The PHA will make every effort that is feasible and permissible to assist victims to remain in their units or other units of the PHA and/or retain assistance. The PHA will bear the cost of any transfer, where permissible.*

*B. Relationships with service providers*

*It is the policy of the PHA to cooperate with organizations and entities, both private and governmental, that provide shelter and/or services to victims of domestic violence. If the PHA becomes aware that an individual assisted by the PHA is a victim of domestic violence, dating violence, sexual assault, or stalking, the PHA will refer the victim to such providers of shelter or services as appropriate. Notwithstanding the foregoing, this Policy does not create any legal obligation requiring the PHA either to maintain a relationship with any particular provider of shelter or services to victims of domestic violence or to make a referral in any particular case. The PHA's annual Public Housing Agency Plan shall describe providers of shelter or services to victims of domestic violence with which the PHA has referral or other cooperative relationships.*

***ATTACHMENT I***

***LOCAL RESOURCES FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING***

***NOTICE OF OCCUPANCY RIGHTS UNDER  
THE VIOLENCE AGAINST WOMEN ACT***

***U.S. Department of Housing and  
Urban Development***

***OMB Approval No. 2577-0286  
Expires 06/30/2017  
HUD-5380***

## **ATTACHMENT II**

### *Notice of Occupancy Rights under the Violence Against Women Act*

#### *To all Tenants and Applicants*

*The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation. The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that Public Housing Program is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA."*

#### **Protections for Applicants**

*If you otherwise qualify for assistance under the Housing Program, you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.*

#### **Protections for Tenants**

*If you are receiving assistance under the Public Housing Program you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.*

*Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under the Public Housing Program solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.*

*Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.*

#### **Removing the Abuser or Perpetrator from the Household**

*The Housing Authority may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.*

*If the Housing Authority chooses to remove the abuser or perpetrator, the XYZ Housing Authority may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, Housing Authority must allow the tenant who is or*



*has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.*

*In removing the abuser or perpetrator from the household, Housing Authority must follow Federal, State, and local eviction procedures. In order to divide a lease, the Housing Authority may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.*

### ***Moving to Another Unit***

*Upon your request, the Housing Authority may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, Housing Authority may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:*

- (1) You are a victim of domestic violence, dating violence, sexual assault, or stalking. If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.*
- (2) You expressly request the emergency transfer. Your housing provider may choose to require that you submit a form or may accept another written or oral request.*
- (3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer, you would suffer violence in the very near future.*

**OR**

*You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.*

*The Housing Authority will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.*

*The Housing Authority's emergency transfer plan provides further information on emergency transfers, and the Housing Authority must make a copy of its emergency transfer plan available to you if you ask to see it.*

*Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking*

*The Housing Authority can, but is not required to, ask you to provide documentation to “certify” that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from Housing Authority must be in writing, and the Housing Authority must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. The Housing Authority may, but does not have to, extend the deadline for the submission of documentation upon your request.*

*You can provide one of the following to the Housing Authority as documentation. It is your choice which of the following to submit if the Housing Authority asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.*

- A complete HUD-approved certification form given to you by Housing Authority with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.*
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.*
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, “professional”) from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.*
- Any other statement or evidence that the Housing Authority has agreed to accept.*

*If you fail or refuse to provide one of these documents within the 14 business days, the Housing Authority does not have to provide you with the protections contained in this notice.*

*If the Housing Authority receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), Housing Authority has the right to request that you provide third-party documentation within thirty 30 calendar days in*

*order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, the Housing Authority does not have to provide you with the protections contained in this notice.*

### ***Confidentiality***

*The Housing Authority must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.*

*The Housing Authority must not allow any individual administering assistance or other services on behalf of the Housing Authority (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.*

*The Housing Authority must not enter your information into any shared database or disclose your information to any other entity or individual. The Housing Authority, however, may disclose the information provided if:*

- You give written permission to Housing Authority to release the information on a time limited basis.*
- The Housing Authority needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.*
- A law requires the Housing Authority or your landlord to release the information.*

*VAWA does not limit the Housing Authority's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.*

### ***Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated***

*You can be evicted, and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, the Housing Authority cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.*

*The protections described in this notice might not apply, and you could be evicted, and your assistance terminated, if the Housing Authority can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:*

- 1) Would occur within an immediate time frame, and*

2) *Could result in death or serious bodily harm to other tenants or those who work on the property.*

*If the Housing Authority can demonstrate the above, the Housing Authority should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.*

#### ***Other Laws***

*VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.*

#### ***Non-Compliance with The Requirements of This Notice***

*You may report the Housing Authority's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with [insert contact information for any intermediary, if applicable] or [insert HUD field office].*

#### ***For Additional Information***

*You may view a copy of HUD's final VAWA rule at [insert Federal Register link].*

*Additionally, Housing Authority must make a copy of HUD's VAWA regulations available to you if you ask to see them.*

*For questions regarding VAWA, please contact [insert name of program or rental assistance contact information able to answer questions on VAWA].*

*For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact [Insert contact information for relevant local organizations].*

*For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.*

*For help regarding sexual assault, you may contact [Insert contact information for relevant organizations]*

*Victims of stalking seeking help may contact [Insert contact information for relevant organizations].*

*Attachment: Certification form HUD-5382 [form approved for this program to be included]*

### **ATTACHMENT III**

#### **CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, AND ALTERNATE DOCUMENTATION**

*U.S. Department of Housing and Urban  
Development  
OMB Approval No. 2577-0286  
Exp. 06/30/2017  
HUD-5382*

*Purpose of Form: The Violence Against Women Act ("VAWA") protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.*

*Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.*

*In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:*

*(1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "professional") from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of "domestic violence," "dating violence," "sexual assault," or "stalking" in HUD's regulations at 24 CFR 5.2003.*

*(2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or*

*(3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.*

*Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault,*

*or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.*

*Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.*

***TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE,  
DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING***

1. *Date the written request is received by victim:*

\_\_\_\_\_

2. *Name of victim:*

\_\_\_\_\_

3. *Your name (if different from  
victim's):* \_\_\_\_\_

4. *Name(s) of other family member(s) listed on the  
lease:* \_\_\_\_\_

\_\_\_\_\_

5. *Residence of victim:*

\_\_\_\_\_

6. *Name of the accused perpetrator (if known and can be safely  
disclosed):* \_\_\_\_\_

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7. Relationship of the accused perpetrator to the victim: \_\_\_\_\_

8. Date(s) and times(s) of incident(s) (if known): \_\_\_\_\_

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10. Location of incident(s): \_\_\_\_\_

*This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.*

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_

*Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.*

**ATTACHMENT IV**

**EMERGENCY TRANSFER**

**REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING**

U.S. Department of Housing and Urban  
Development  
OMB Approval No. 2577-0286  
Exp. 06/30/2017  
HUD-5383

*Purpose of Form: If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault, or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.*

*The requirements you must meet are:*

- (1) You are a victim of domestic violence, dating violence, sexual assault, or stalking. If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.*
- (2) You expressly request the emergency transfer. Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.*
- (3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.*

**OR**

*You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify*



*for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.*

*Submission of Documentation: If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.*

*Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.*

**TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER**

1. Name of victim requesting an emergency transfer:

\_\_\_\_\_

2. Your name (if different from victim's) \_\_\_\_\_

3. Name(s) of other family member(s) listed on the lease: \_\_\_\_\_

\_\_\_\_\_

4. Name(s) of other family member(s) who would transfer with the victim: \_\_\_\_\_

---

5. Address of location from which the victim seeks to transfer:

\_\_\_\_\_

6. Address or phone number for contacting the victim: \_\_\_\_\_

7. Name of the accused perpetrator (if known and can be safely disclosed): \_\_\_\_\_

8. Relationship of the accused perpetrator to the victim: \_\_\_\_\_

9. Date(s), Time(s) and location(s) of incident(s): \_\_\_\_\_

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10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. \_\_\_\_\_ Yes \_\_\_\_\_ No

11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.

\_\_\_\_\_

12. If voluntarily provided, list any third-party documentation you are providing along with this notice: \_\_\_\_\_

*This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.*

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_

## **GLOSSARY**

**50058 Form:** *The HUD form that housing authorities are required to complete and electronically submit to HUD for each assisted household in public housing to record information used in the certification and re-certification process and, at the option of the housing authority, for interim reexaminations. Housing Authorities must retain at a minimum the last three years of the form 50058, and supporting documentation, during the term of each assisted lease, and for a period of at least three years from the end of participation date. Electronic retention of form HUD 50058 and HUD 50058-FSS and supporting documentation fulfills the record retention requirement.*

**1937 Housing Act:** *The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) (24 CFR 5.100)*

**ACOP** *refers to the Admissions and Continued Occupancy Policies (ACOP) for the Public Housing Program.*

**Actual and imminent threat:** *a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.*

**Adjusted Annual Income:** *The amount of household income, after deductions for specified allowances, on which tenant rent is based. (24 CFR 5.611)*

**Adult:** *A household member who is 18 years or older or who is the head of the household, or spouse, or co-head. An emancipated minor is also considered an adult. In the anti-drug portions of this policy, it also refers to a minor who has been convicted of a crime as an adult under any Federal, State or tribal law.*

**Affiliated individual:** *with respect to an individual, means: (1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or (2) Any individual, tenant, or lawful occupant living in the household of that individual.*

**Allowances:** *Amounts deducted from the household's annual income in determining adjusted annual income (the income amount used in the rent calculation). Allowances are given for elderly families, dependents, medical expenses for elderly and disabled families, disability expenses, and childcare expenses for children under 13 years of age. Other allowances can be given at the discretion of the housing authority.*

**Annual Contributions Contract (ACC):** The written contract between HUD and a housing authority under which HUD agrees to provide funding for a program under the 1937 Act, and the housing authority agrees to comply with HUD requirements for the program. (24 CFR 5.403)

**Alternative non-public housing rent (alternative rent)** is the monthly amount a PHA must charge non-public housing over-income (NPHOI) families, if allowed by PHA policy to remain in a public housing unit, after they have exceeded the 24 consecutive month grace period. The alternative rent is defined at 24 CFR 960.102, as the higher of the Fair Market Rent (FMR) or per unit monthly subsidy. The monthly subsidy provided for the unit, is determined by adding the per unit assistance provided to a public housing property as calculated through the applicable formulas for the Public Housing Capital Fund and Public Housing Operating Fund. See 24 CFR 960.102 for more details about how HUD will calculate and publish such funding amounts.

**Annual Income:**

Annual income includes ALL Amounts 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 income from assets

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. (ex. Bitcoins)  
Imputed returns are based on the current passbook savings rate as determined by HUD.

**Adjusted Annual Income:** means annual income (as determined under § 5.609) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) **Mandatory deductions.**

(1) \$480 for each dependent, which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25;

(2) \$525 for any elderly family or disabled family, which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25; Effective after 1/1/24

(3) The sum of the following, to the extent the sum exceeds ten percent of annual income:

(i) Unreimbursed health and medical care expenses of any elderly family or disabled family; and Effective after 1/1/24

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with a disability, to the extent necessary to enable any member of the family (including the member who is a person with a disability) to be employed. This deduction may not exceed the combined earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(b) *Additional deductions.* (1) For public housing, the Housing Choice Voucher (HCV) and the Section 8 moderate rehabilitation programs (including the moderate rehabilitation Single-Room Occupancy (SRO) program), a PHA may adopt additional deductions from annual income.

(i) *Public housing.* A PHA that adopts such deductions will not be eligible for an increase in Capital Fund and Operating Fund formula grants based on the application of such deductions. The PHA must establish a written policy for such deductions.

(ii) *HCV, moderate rehabilitation, and moderate rehabilitation Single-Room Occupancy (SRO) programs.* A PHA that adopts such deductions must have sufficient funding to cover the increased housing assistance payment cost of the deductions. A PHA will not be eligible for an increase in HCV renewal funding or moderate rehabilitation program funding for subsidy costs resulting from such deductions. For the HCV program, the PHA must include such deductions in its administrative plan. For moderate rehabilitation, the PHA must establish a written policy for such deductions. At the discretion of the Executive Director, effective after 1/1/24

***Applicant (applicant family):*** A person or family that has applied for admission to a program but is not yet a participant in the program. (24 CFR 5.403)

***As-Paid States:*** States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs. Currently, the four as-paid States are New Hampshire, New York, Oregon, and Vermont.

***Assets:*** The value of equity in savings, checking, IRA and Keogh accounts, real property, stocks, bonds, and other forms of capital investment. The value of necessary items of personal property such as furniture and automobiles are not counted as assets. (Also see "net family assets.")

***Asset Income:*** Income received from assets held by family members. If assets total more than \$5,000, income from the assets is "imputed" and the greater of actual asset income and imputed asset income is counted in annual income. (See "imputed asset income" below.)

***Assistance applicant:*** A family or individual that seeks admission to the public housing program.

***Bifurcate:*** means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

***Business Days:*** Days the housing authority is open for business.

***Ceiling Rent:*** Maximum rent allowed for some units in public housing developments under the income method of calculating rent. It must equal or exceed the Flat Rent.

**Certification:** *The examination of a household's income, expenses, and family composition to determine the family's eligibility for program participation and to calculate the family's share of rent.*

**Child:** *For purposes of citizenship regulations, a member of the family other than the family head or spouse who is under 18 years of age. (24 CFR 5.504(b))*

**Childcare Expenses:** *Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for childcare. In the case of childcare necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income. (24 CFR 5.603(d))*

**Citizen:** *A citizen or national of the United States. (24 CFR 5.504(b))*

**Community service:** *The performance of voluntary work or duties that are a public benefit and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities.*

**Consent Form:** *Any consent form approved by HUD to be signed by assistance applicants and participants for the purpose of obtaining income information from employers and SWICAs, return information from the Social Security Administration, and return information for unearned income from the Internal Revenue Service. The consent forms may authorize the collection of other information from assistance applicants or participant to determine eligibility or level of benefits. (24 CFR 5.214)*

**Covered Families:** *Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.*

**Covered Person:** *For purposes of the anti-drug provisions of this policy, a covered person is a tenant, any member of the tenant's household, a guest or another person under the tenant's control.*

**Currently engaging in:** *With respect to behavior such as illegal use of a drug, other drug-related criminal activity, or other criminal activity, currently engaging in means that the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current. Arrests alone are not sufficient evidence of criminal activity.*

**Dating Violence:** Violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

**Decent, Safe, and Sanitary:** Housing is decent, safe, and sanitary if it satisfies the applicable housing quality standards.

**Department:** The Department of Housing and Urban Development. (24 CFR 5.100)

**Dependent:** A member of the family (except foster children and foster adults), other than the family head or spouse, who is under 18 years of age or is a person with a disability or is a full-time student. (24 CFR 5.603(d))

**Dependent Allowance:** An amount, equal to \$480 multiplied by the number of dependents, that is deducted from the household's annual income in determining adjusted annual income.

**Disability Assistance Expenses:** Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source. (24 CFR 5.603(d))

**Disability Assistance Expense Allowance:** In determining adjusted annual income, the amount of disability assistance expenses deducted from annual income for families with a disabled household member.

**Disabled Family:** A family whose head (including co-head), spouse, or sole member is a person with disabilities; two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides. (24 CFR 5.403(b)) (Also see "person with disabilities.")

**Disabled Person:** See "person with disabilities."

**Displaced Family:** A family in which each member, or whose sole member, is a person displaced by governmental action (such as urban renewal), or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws. (24 CFR 5.403(b))

**Displaced Person:** A person displaced by governmental action or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws. [1937 Act]

**Domestic Violence:** The term domestic violence includes felony or misdemeanor

crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who:

- (A) is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
- (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (C) shares a child in common with the victim; or
- (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

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

**Drug-Related Criminal Activity:** 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.

**Earned Income:** means 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, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits.

**Economic Abuse:** The term 'economic abuse', in the context of domestic violence, dating violence, and abuse in later life, means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to—(A) restrict a person's access to money, assets, credit, or financial information; (B) unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or (C) exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

**Economic self-sufficiency program:** Any program designed to encourage, assist, train or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include programs for job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities.

**Elderly Family:** A family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age; two or more persons who are at least 62 years of age living



together; or one or more persons who are at least 62 years of age living with one or more live-in aides. (24 CFR 5.403)

**Elderly/Disabled Family Allowance:** For elderly families, an allowance of \$400 is deducted from the household's annual income in determining adjusted annual income.

**Elderly Person:** A person who is at least 62 years of age. (1937 Housing Act)

**Extremely low-income families:** A very low-income family whose income does not exceed the higher of 30% of the median income for the area (as determined by HUD with adjustments for smaller and larger families) or the Federal poverty level, except that HUD may establish income ceilings higher or lower than 30% of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

**Fair Housing Act:** Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 et seq.). (24 CFR 5.100)

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

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

2. An otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care or will leave Foster Care within 90 days and is homeless or is at risk of becoming homeless at age 16 or older or

3. A group of persons residing together, and such group includes, but is not limited to:
  - A. A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
  - B. An elderly family (including co-head);
  - C. A near-elderly family (including co-head);
  - D. A disabled family (including co-head);
  - E. A displaced family;
  - F. The remaining member of a tenant family; and

**Family Members:** All members of the household other than live-in aides, foster children, and foster adults. All family members permanently reside in the unit, though they may be temporarily absent. All family members are listed on the lease.

**Family Self-Sufficiency Program (FSS Program):** The program established by a housing authority to promote self-sufficiency among participating families, including the coordination of supportive services. (24 CFR 984.103(b))

**Flat Rent:** A rent amount the family may choose to pay in lieu of having their rent determined under the income method. The flat rent is established by the housing authority based on a HUD mandate that it be set at no less than 80% of the FMR, adjusted for tenant-paid utilities. PHAs have the flexibility to conduct reexaminations of family income once every three years instead of annually for families that choose to pay the flat rent. The flat rent amount a family pays is not locked in for the three-year period. Instead, the PHA must revise the flat rent amount from year to year based on the findings of the PHA's rent reasonableness analysis and changes to the FMR.

**Full-Time Student:** A person who is attending school or vocational training on a full-time basis as defined by the institution.

**Gender Identity:** Actual or perceived gender-related characteristics.

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

**Head of Household:** The adult member of the family who is the head of the household for purposes of determining income eligibility and rent. (24 CFR 5.504(b))

**Homeless (as defined for 50058 reporting purposes):** An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

- a. An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground; or
- b. An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
- c. An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

or

*Any individual or family who:*

- a. Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; and*
- b. Has no other residence; and*
- c. Lacks the resources or support networks, e.g. family, friends, and faith-based or other social networks, to obtain other permanent housing.*

***Household Members:*** *All members of the household including members of the family, live-in aides, foster children, and foster adults. All household members are listed on the lease, and no one other than household members are listed on the lease.*

***Housing Assistance Plan:*** *A housing plan that is submitted by a unit of general local government and approved by HUD as being acceptable under the standards of 24 CFR 570.*

***Immediate Family Member:*** *a spouse, parent, brother or sister, or child of the person, or an individual to whom that person stands in loco parentis (in place of a parent); or any other person living in the household of that person and related to that person by blood or marriage.*

***Imputed Income:*** *For households with net family assets of more than \$5,000, the amount calculated by multiplying net family assets by a HUD-specified percentage. If imputed income is more than actual income from assets, the imputed amount is used as income from assets in determining annual income.*

***Imputed welfare income:*** *The amount of annual income not actually received by a family, as a result of a welfare benefit reduction for welfare fraud or the failure to comply with economic self-sufficiency requirements that is nonetheless included in the family's annual income for purposes of determining rent.*

***In-Kind Payments:*** *Contributions other than cash made to the family or to a family member in exchange for services provided or for the general support of the family (e.g., groceries provided on a weekly basis, baby sitting provided on a regular basis).*

***Income Method:*** *A means of calculating a family's rent based on the greater of 10% of their monthly income, 30% of their adjusted monthly income, the welfare rent, or the minimum rent. Under the income method, rents may be capped by a ceiling rent as long as the ceiling rent equals or exceeds the flat rent. Under this method, the family's income is evaluated at least annually.*

***Interim (examination):*** *A reexamination of a family income, expenses, and household composition conducted between the regular annual recertifications when a change in a household's circumstances warrants such a reexamination.*

**Law enforcement agency:** *The National Crime Information Center (NCIC), police departments and other law enforcement agencies that hold criminal conviction records.*

**Live-In Aide:** *A person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities and who:*

- A. *Is determined to be essential to the care and well-being of the persons;*
- B. *Is not obligated for the support of the persons; and*
- C. *Would not be living in the unit except to provide the necessary supportive services. (24 CFR 5.403(b))*

*A live-in aide is not a party to the lease.*

**Low-Income Families:** *Those families whose incomes do not exceed 80% of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80% of the median for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low family incomes.*

**Medical Expenses:** *Medical expenses (of all family members of an elderly or disabled family), including medical insurance premiums, that are anticipated during the period for which annual income is computed and that are not covered by insurance. (24 CFR 5.603(d)). These expenses include, but are not limited to, prescription and non-prescription drugs, costs for doctors, dentists, therapists, medical facilities, care for a service animal, transportation for medical purposes.*

**Mixed Family:** *A family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status. (24 CFR 5.504(b))*

**Mixed population development:** *A public housing development, or portion of a development, that was reserved for elderly and disabled families at its inception (and has retained that character). If the development was not so reserved at its inception, the PHA has obtained HUD approval to give preference in tenant selection for all units in the development (or portion of development) to elderly families and disabled families. These developments were formerly known as elderly projects.*

**Monthly Adjusted Income:** *One twelfth of adjusted income. (24 CFR 5.603(d))*

**Monthly Income:** *One twelfth of annual income. (24 CFR 5.603(d))*

**National:** *A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession. (24 CFR 5.504(b))*

**Near-Elderly Family:** *A family whose head (including co-head), spouse, or sole member is a person who is at least 50 years of age but below the age of 62; two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides. (24 CFR 5.403(b))*

**Net Family Assets:**

- A. *Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.*
- B. *In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income.*
- C. *In determining net family assets, housing authorities or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms. (24 CFR 5.603(d))*

**Non-Citizen:** *A person who is neither a citizen nor national of the United States. (24 CFR 5.504(b))*

**Non-public housing over-income family (NPHOI family)** *is defined in 24 CFR 960.102 as a family that has exceeded the over-income limit for 24 consecutive months who remains in a public housing unit, as allowed by PHA policy, paying the alternative rent. These families are no longer public housing program participants and are unassisted tenants.*

**Occupancy Standards:** *The standards that a housing authority establishes for determining the appropriate number of bedrooms needed to house families of different sizes or composition.*

**Other person under the tenant's control:** *For the purposes of the definition of covered person it means the person, although not staying as a guest (as defined in this section) in the unit, is, or was at the time of the activity in question, on the premises (as premises is defined in this section) because of an invitation from the tenant or other member of the household who has express or*

*implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not under the tenant's control.*

*Over-income family (OI family) is defined in 24 CFR 960.102 as a family whose income exceeds the OI limit. This term includes families during the grace period or that are in the period before termination and are still public housing program participants. Note that in the public housing program, this term previously referred to a family that is not a low-income family (i.e., a family with an income exceeding 80 percent Area Median Income (AMI)).*

***Over-income limit (OI limit)** is defined in 24 CFR 960.102. In the regulations, this amount is determined by multiplying the applicable income limit for a very low-income (VLI) family, as defined in 24 CFR 5.603(b), by a factor of 2.4 (i.e., 120 percent of the AMI).*

***Participant:** A family or individual that is assisted by the public housing program.*

***Permanently absent:** A person or persons not actually residing in the unit who once lived there and does not intend to return. One becomes permanently absent when one vacates the unit.*

***Person with Disabilities:** A person who:*

- A. Has a disability as defined in 42 U.S.C. 423*
- B. Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:
  - 1. Is expected to be of long-continued and indefinite duration;*
  - 2. Substantially impedes his or her ability to live independently; and*
  - 3. Is of such a nature that the ability to live independently could be improved by more suitable housing conditions.**
- C. Has a developmental disability as defined in 42 U.S.C. 6001.*

*This definition does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome.*

*For purposes of qualifying for low-income housing, it does not include a person whose disability is based solely on any drug or alcohol dependence.*

***Personally Identifiable Information (PII):** Information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone,*

or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

**PHA Plan** is defined in 24 CFR 903.4(a). It is a comprehensive guide to the public housing agency's policies, programs, operations, and strategies for meeting local housing needs and goals. There are two parts to the PHA Plan: the 5-Year Plan, which each PHA submits to HUD once every 5th PHA fiscal year, and the Annual Plan, which is submitted to HUD every year by non-qualified agencies (non-qualified agencies are PHAs that do not meet the definition of a qualified agency)

**Premises:** for purposes of the anti-drug provisions of this policy it means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

**Previously unemployed:** This includes a person who has earned, in the 12 months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

**Processing Entity:** The person or entity that is responsible for making eligibility and related determinations and an income reexamination. In the Section 8 and public housing programs, the processing entity is the responsibility entity.

**Proration of Assistance:** The reduction in a family's housing assistance payment to reflect the proportion of family members in a mixed family who are eligible for assistance. (24 CFR 5.520)

**Public Housing:** Housing assisted under the 1937 Act, other than under Section 8. Public housing includes dwelling units in a mixed-finance project that are assisted by a PHA with capital or operating funds.

**Public Housing Agency (PHA):** Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing under the 1937 Housing Act. (24 CFR 5.100)

**Real Property** has the same meaning as that provided under the law of the State where the property is located.

**Recertification:** The annual reexamination of a family's income, expenses, and composition to determine the family's rent.

**Remaining Member of a Tenant Family:** A member of the family listed on the lease who continues to live in the public housing dwelling after all other family members have left.

**Responsible Entity:**

- A. *For the public housing program, the Section 8 tenant-based assistance program (24 CFR 982), and the Section 8 project-based certificate or voucher program (24 CFR 983), and the Section 8 moderate rehabilitation program (24 CFR 882), responsible entity means the PHA administering the program under an ACC with HUD;*
- B. *For all other Section 8 programs, responsible entity means the Section 8 project owner.*

***Self-Declaration:*** *A type of verification statement by the tenant as to the amount and source of income, expenses, or family composition. Self-declaration is acceptable verification only when third-party verification or documentation cannot be obtained.*

***Sensitive Personally Identifiable Information:*** *PII that when lost, compromised or disclosed without authorization could substantially harm an individual. Examples of sensitive PII include social security or driver's license numbers, medical records, and financial account numbers such as credit or debit card numbers.*

***Sexual assault:*** *any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.*

***Sexual Orientation:*** *Homosexuality, heterosexuality, or bisexuality.*

***Shelter Allowance:*** *That portion of a welfare benefit (e.g., TANF) that the welfare agency designates to be used for rent and utilities.*

***Single Person:*** *Someone living alone or intending to live alone who does not qualify as an elderly family, a person with disabilities, a displaced person, or the remaining member of a tenant family. (Public Housing: Handbook 7465.1 REV-2, 3-5)*

***Specified Welfare Benefit Reduction:***

- A. *A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.*
- B. *"Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:*
  - 1. *at the expiration of a lifetime or other time limit on the payment of welfare benefits;*



2. *because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or*
3. *because a family member has not complied with other welfare agency requirements.*

**Stalking:** *engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) Fear for the person's individual safety or the safety of others; or (2) Suffer substantial emotional distress.*

**State Wage Information Collection Agency (SWICA):** *The State agency receiving quarterly wage reports from employers in the State or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information. (24 CFR 5.214)*

**Technological Abuse:** *The term 'technological abuse' means an act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology, including but not limited to: internet enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.*

**Temporarily absent:** *A person or persons not actually residing in a unit for a period of time while still maintaining control of the unit. If the absence exceeds **ninety (90)** calendar days, the Housing Authority must agree to the absence.*

**Temporary Assistance to Needy Families (TANF):** *The program that replaced the Assistance to Families with Dependent Children (AFDC) that provides financial assistance to needy families who meet program eligibility criteria. Benefits are limited to a specified time period.*

**Tenant:** *The person or family renting or occupying an assisted dwelling unit. (24 CFR 5.504(b))*

**Tenant Rent:** *The amount payable monthly by the family as rent to the housing authority. Where all utilities (except telephone) and other essential housing services are supplied by the housing authority or owner, tenant rent equals total tenant payment. Where some or all utilities (except telephone) and other essential housing services are supplied by the housing authority and the cost thereof is not included in the amount paid as rent, tenant rent equals total tenant payment less the utility allowance. (24 CFR 5.603(d))*

**Third-Party (verification):** *Written or oral confirmation of a family's income, expenses, or household composition provided by a source outside the household.*

**Total Tenant Payment (TTP):**

- A. *Total tenant payment for families whose initial lease is effective on or after August 1, 1982:*
1. *Total tenant payment is the amount calculated under Section 3(a)(1) of the 1937 Act which is the higher of :*
    - a. *30% of the family's monthly adjusted income;*
    - b. *10% of the family's monthly income; or*
    - c. *If the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated.*

*If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under section 3(a)(1) shall be the amount resulting from one application of the percentage.*
  2. *Total tenant payment for families residing in public housing does not include charges for excess utility consumption or other miscellaneous charges.*
- B. *Total tenant payment for families residing in public housing whose initial lease was effective before August 1, 1982: Paragraphs (b) and (c) of 24 CFR 913.107, as it existed immediately before November 18, 1996, will continue to govern the total tenant payment of families, under a public housing program, whose initial lease was effective before August 1, 1982.*

**Tuition:** *The amount of tuition and required fees covering a full academic year most frequently charged to students. These values represent what a typical student would be charged and may not be the same for all students at an institution. If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an entire academic year is used to estimate average tuition. Required fees include all fixed sum charges that are required of a large proportion of all students. The student who does not pay the charges is an exception. Verification of tuition and fees can be obtained from the student's bill or annual statement, by contacting the bursar's office, or from the school's website.*

*Examples of required fees include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).*

*Expenses related to attending an institution of higher education must **not** be included as tuition. Examples of these expenses include, but are not limited to, room and board, books, supplies, meal plans, transportation and parking, student health insurance plans, and other non-fixed sum charges.*

*For Section 8 programs only, PHAs must include amounts of financial assistance an individual receives in excess of tuition and other required fees and charges when determining annual income.*

*For the Public Housing program, the full amount of financial assistance a student receives while participating in the program continues to be excluded from the program participant's annual income.*

***Unearned Income means any annual income that is not earned income.***

***Utility Allowance:*** *If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made by a housing authority of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. (24 CFR 5.603)*

***Utility Reimbursement:*** *The amount, if any, by which the utility allowance for the unit, if applicable, exceeds the total tenant payment for the family occupying the unit. (24 CFR 5.603)*

***VAWA:*** *the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.).*

***Very Low-Income Families:*** *Families whose incomes do not exceed 50% of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50% of the median for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.*

***Victims of Domestic Violence:*** *Individuals or families who have been or are being subjected to or victimized by violence by a member of the family or household. The PHA Housing Authority will require evidence that the family has been displaced as result of fleeing violence in the home. Individuals and families are also eligible for this preference if there is proof that the individual or family is currently living in a situation where they are being subjected to or victimized by violence in the home. Evidence or proof may include a Protection from Abuse Order, police report, or written verification that the individual or family is living in an emergency shelter because the individual or family has been subjected to or victimized by violence by a member of the family or household. The following criteria are used to establish an individual's or a family's eligibility for this preference:*

- A. *Verified actual or threatened physical violence directed against the applicant or the applicant's family by a spouse or other household member who lives in the unit with the family or where the family has fled its housing to escape from an abuser.*
- B. *The actual or threatened violence must have occurred within the past 30 calendar days or be of a continuing nature.*

*An applicant who lives in a violent neighborhood or is fearful of other violence outside the household is not considered involuntarily displaced as a result of domestic violence.*

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

*The Housing Authority will approve the return of the abuser to the household under the following conditions:*

- A. *The Housing Authority verifies that the abuser has received therapy or counseling that appears to minimize the likelihood of the recurrence of violent behavior.*
- B. *A counselor, therapist or other appropriate professional recommends in writing that the individual be allowed to reside with the family.*

*If the abuser returns to the family without approval of the Housing Authority, the Housing Authority will deny or terminate assistance for breach of the certification.*

*If the family requests it, the PHA Housing Authority will try to ensure that the new location of the family is concealed.*

***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. Arrests alone are not sufficient evidence of criminal activity.*

***Welfare Assistance:*** *Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments (including assistance provided under the Temporary Assistance for Needy Families (TANF) program, as that term is defined under the implementing regulations issued by the Department of Health and Human Services at 45 CFR 260.31).*

*45 CFR 260.31 defines the term "assistance" to include cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).*

*It includes such benefits even when they are:*

- A. Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and*
- B. Conditioned on participation in work experience or community service (or any other work activity under 45 CFR 261.30).*

*Except where excluded later in this definition, it also includes supportive services such as transportation and childcare provided to families who are not employed.*

*The term "assistance" excludes:*

- A. Nonrecurrent, short-term benefits that:
  - 1. Are designed to deal with a specific crisis situation or episode of need;*
  - 2. Are not intended to meet recurrent or ongoing needs; and*
  - 3. Will not extend beyond four months.**
- B. Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);*
- C. Supportive services such as child care and transportation provided to families who are employed;*
- D. Refundable earned income tax credits;*
- E. Contributions to, and distributions from, Individual Development Accounts;*
- F. Services such as counseling, case management, peer support, childcare information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and*
- G. Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of the Act, to an individual who is not otherwise receiving assistance.*

***Welfare Rent:*** *In "as-paid" welfare programs, the amount of the welfare benefit designated for shelter and utilities.*

***Written notification:*** *All written notifications required in this policy shall be hand delivered with a signed receipt or mailed via first class mail unless specified otherwise.*

## ***ACRONYMS***

<i>ACC</i>	<i>Annual Contributions Contract</i>
<i>CFR</i>	<i>Code of Federal Regulations</i>
<i>FSS</i>	<i>Family Self Sufficiency (program)</i>
<i>HCDA</i>	<i>Housing and Community Development Act</i>
<i>HQS</i>	<i>Housing Quality Standards</i>
<i>HUD</i>	<i>Department of Housing and Urban Development</i>
<i>INS</i>	<i>(U.S.) Immigration and Naturalization Service</i>
<i>NAHA</i>	<i>(Cranston-Gonzalez) National Affordable Housing Act</i>
<i>NHA</i>	<i>Neligh Housing Authority</i>
<i>NOFA</i>	<i>Notice of Funding Availability</i>
<i>OMB</i>	<i>(U.S.) Office of Management and Budget</i>
<i>PHA</i>	<i>Public Housing Agency</i>
<i>QHWRA</i>	<i>Quality Housing and Work Responsibility Act of 1998</i>
<i>SSA</i>	<i>Social Security Administration</i>
<i>TTP</i>	<i>Total Tenant Payment</i>



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## CODE OF CONDUCT FOR HUD GRANT PROGRAMS

Code of Conduct policies must address the “Conducting Business in Accordance with Ethical Standards” requirements included in the Administrative, National & Departmental Policy Requirements and Terms for HUDs Financial Assistance ([/sites/dfiles/SPM/documents/AdminReqsandTermsFY2023-10282022.docx](#)).

A. **Code of Conduct for Procuring Property and Services.** All Federal award recipients, except states, and all subrecipients under Federal awards must have a code of conduct (or written standards of conduct) for procurements that meets all requirements in 2 CFR 200.318(c). Before entering into an agreement with HUD, each applicant selected for an award (other than a state) must ensure an up-to-date copy of the organization’s code of conduct, dated and signed by the Executive Director, Chair, or equivalent official, of the governing body of the organization, is available in the Code of Conduct e-library ([/sites/dfiles/SPM/documents/CodeofConductE-Library3.1.2023.xlsx](#)).

Applicants can check the Code of Conduct List to confirm HUD has received their Code of Conduct. HUD does not collect or review state codes of conduct for compliance with 2 CFR 200.318(c). Instead, each state must follow the same policies and procedures for

procurements under Federal awards that the state uses for procurements from its non-Federal funds, as provided in 2 CFR 200.317.

**B. Other Conflicts of Interest.** All recipients and subrecipients must comply with the conflict-of-interest requirements in the applicable program regulations and grant agreements. If there are no program-specific regulations for the award, the following conflict-of-interest requirements apply:

i. **Conflicts Subject to Procurement Regulations.** In the procurement of property or services by recipients and subrecipients, the conflict-of-interest rules in 2 CFR 200.317 and 2 CFR 200.318(c) shall apply. In all cases not governed by 2 CFR 200.317 and 2 CFR 200.318(c), recipients and subrecipients must follow the requirements contained in the list of exceptions located in the Administrative, National & Departmental Policy Requirements and Terms for HUDs Financial Assistance (/sites/dfiles/SPM/documents /AdminRegandTermsFY2023-10282022.docx).

ii. **General prohibition.** No person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or subrecipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have a financial interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

A list of exceptions can be found in the Administrative, National & Departmental Policy Requirements and Terms for HUDs Financial Assistance (/sites/dfiles/SPM/documents



/AdminRegsandTermsFY2023-10282022.docx).

Codes of Conduct must:

1. Include a cover letter on the company's letterhead that provides the name and title of the responsible official, mailing address, business telephone number and email address;
2. Prohibit real and apparent conflicts of interest that may arise among officers, employees or agents, or any member of his or her immediate family, his or her partner or an organization that employs any of the indicated parties;
3. If applicable, the standards must also cover organizational conflicts of interest;
4. Prohibit the solicitation and acceptance by employees, of gifts or gratuities in excess of minimum value; and
5. Provide for administrative and disciplinary actions to be applied for violations of such standards.

Failure to provide a copy of the organizations Code of Conduct and/or notify HUD of potential conflicts of interest may prevent applicants from receiving HUD funds.

If your organization is not listed in the Code of Conduct e-library, please forward an electronic copy of the Code of Conduct statement to [askGMO@hud.gov](mailto:askGMO@hud.gov)

(<mailto:askGMO@hud.gov>)

<sup>1</sup> Organization UFI#  
The email should contain:

2. Organization Legal Business Name (from SAM.gov)
3. Complete mailing address
4. Name, title, email and phone# for the person with executive authority.
5. Electronic codes of conduct statement (searchable documents preferred)

The Code of Conduct e-library (/sites/dfiles/SPM/documents/CodeofConductE-Library3.1.2023.xlsx) will be recorded in a single Microsoft Excel workbook displaying organizations with a compliant Code of Conduct policy submissions. The Code of Conduct e-library is updated at least quarterly.

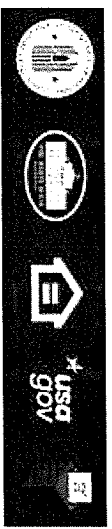
## Agency

## Resources

### U.S. Department of Housing and Urban Development

451 7th Street, S.W., Washington, DC 20410  
T: 202-708-1112  
TTY: 202-708-1455

[Find a HUD office near you \(/localoffices\)](#)



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## **PROCUREMENT POLICY**

*Established for the HHA by action of the Board of Commissioners on 2022. This Procurement Policy complies with the Annual Contributions Contract (ACC), the procurement standards of 2 CFR 200.317 - 200.326, 2 CFR b, Chapter XXIV; cost principles of 2 CFR 225, HUD Handbook 7460.8 "Procurement Handbook for Public Housing Agencies.*

## **I. GENERAL PROVISIONS**

### **A. Definition of Procurement**

*The term "procurement" as used in this Policy includes the procuring, purchasing, leasing, or renting of:*

- 1) goods, supplies, equipment and materials*
- 2) construction and maintenance;*
- 3) consultant services*
- 4) architectural and engineering (A/E) Services*
- 5) social services*
- 6) Other services*

### **B. Purpose**

*The purpose of this Procurement Policy is to*

- 1) provide for the fair and equitable treatment of all persons or firms involved in purchasing by the PHA;*
- 2) assure that supplies, services and construction are procured efficiently, effectively and at the most favorable prices available to the PHA;*
- 3) promote competition in all purchasing;*
- 4) provide safeguards for maintaining a procurement system of quality and integrity;*
- 5) document procurement actions to demonstrate the method used by the PHA for every purchase; and*
- 6) assure that PHA purchasing actions are in full compliance with applicable federal standards, HUD regulations and state and local laws.*

### **C. Application**

- 1) This Policy does not govern administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income, e.g., fee-for-*

*service revenue under 24 CFR 990. These are subject to applicable State and local requirements.*

- 2) *This Procurement Policy does not apply to employment contracts, which are governed by the PHA's Personnel Policy;*
- 3) *This Procurement Policy applies to all contracts for the procurement of supplies, services and construction entered into by the PHA after the effective date of this Policy.*
- 4) *It shall apply to every expenditure of funds by the PHA for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Policy shall prevent the PHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law.*
- 5) *When both HUD and non-Federal grant funds are used for a project, the work to be accomplished with the funds will be separately identified prior to procurement so that appropriate requirements can be applied, if necessary.*
  - a. *If it is not possible to separate funds, HUD procurement regulations shall be applied to the total project.*
  - b. *If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the funding source may be followed.*

**D. Public Access to Procurement Information**

*Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the PHA Public Information Act.*

**E. Changes in Laws and Regulations**

*If an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with this Policy, automatically supersede this Policy.*

**II. ETHICS IN PUBLIC CONTRACTING**

**A. General**

*The PHA shall adhere to the following code of conduct, consistent with applicable state or local law.*

**B. Conflict of Interest**

*No employee, officer, or agent of this PHA shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:*

- 1) *an employee, officer or agent involved in making the award;*
- 2) *his/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, sister-in-law, brother-in-law, stepdaughter, stepson, stepmother, stepfather, stepbrother, stepsister, half-brother, half-sister, grandparent);*
- 3) *his/her partner; or*
- 4) *an organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.*

**C. Gratuities, Kickbacks, and Use of Confidential Information**

*PHA officers, employees or agents shall not solicit or accept gratuities, favors, or items of more than \$50.00 in value from contractors, potential contractors or parties to subcontractors, and shall not knowingly use confidential information for actual or anticipated personal gain.*

**D. Prohibition Against Contingent Fees**

*Contractors shall not retain a person to solicit or secure a PHA contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies.*

**E. Disciplinary and Other Remedial Action**

*A violation of this Code of Conduct by a PHA employee while employed by the PHA, may be cause for appropriate remedial or disciplinary action, which may include in addition to any penalty prescribed by law:*

- 1) *Changes in assigned duties*
- 2) *Divestment by the employee of his conflicting interest; and unless otherwise provided, divestiture is to be completed within sixty (60) days after notice of a decision that a conflict exists*

3) *Disciplinary action including suspension and/or termination of employment in appropriate cases*

4) *Disqualification for a particular assignment*

#### **IV. BOARD APPROVAL OF PROCUREMENT ACTIONS**

*Approval by the Board of Commissioners is not required for any procurement action \$50,000 and under so long as the money for the procurement is available in a Board-approved budget. For procurements over \$50,000, approval of the Board of Commissioners is required. The Board of Commissioners delegates all procurement and contracting authority to the Executive Director and authorizes the Executive Director to ensure all procurement actions are conducted in accordance with the policies contained herein. (not required by law)*

#### **V. PROCUREMENT AUTHORITY**

*While the Executive Director is responsible for ensuring that the PHA's procurements comply with this Policy, the Executive Director may delegate all procurement authority as is necessary and appropriate to conduct the business of the Agency. The person responsible for procurement will be referred to as the Contracting Officer.*

*Further, and in accordance with this delegation of authority, the Executive Director shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in this Policy, consistent with Federal, State, or local law.*

#### **VI. PROCUREMENT PLANNING**

*Planning is essential to managing the procurement function properly. Hence, the PHA will periodically review its record of prior purchases, as well as future needs, to:*

- A. find patterns of procurement actions that could be performed more efficiently or economically;*
- B. maximize competition and competitive pricing among contracts and decrease the PHA's procurement costs;*
- C. reduce PHA administrative costs;*
- D. ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests;*
- E. minimize errors that occur when there is inadequate lead time; and*

*F ensure adequate internal controls.*

*Consideration will be given to storage, security and handling requirements when planning the most appropriate purchasing actions.*

## **VII. INDEPENDENT COST ESTIMATES**

*For all purchases above the Micro Purchase threshold, the PHA shall prepare an Independent Cost Estimate (ICE) prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item/service to be purchased.*

## **VIII. PROCUREMENT METHODS AND REQUIREMENTS**

### **A. Micro Purchases (purchases up to but not exceeding \$10,000)**

#### **1) General**

- a. For any amounts not exceeding \$10,000, only one quote is required provided the quote is considered reasonable.*
- b. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources.*
- c. Award shall be made to the qualified vendor that provides the best value to the PHA.*
- d. The PHA shall not break down jobs into several purchases that are less than the applicable threshold merely to: (1) permit use of the Micro Purchase procedures or (2) avoid any requirements that apply to purchases that exceed the Micro Purchase threshold. In order for the PHA to use the Micro Purchase method, the aggregate amount paid to one vendor during a year must not exceed the Micro Purchase threshold*

#### **2) Cost Analysis**

*No formal cost or price analysis is required. Rather, the execution of a purchase by the Contracting Officer through a Purchase Order or other means shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.*

#### **3) Solicitation**

*Quotes may be obtained orally (either in person or by phone), by fax, in writing, e-mail or E-Procurement.*



4) *Wage Rate Administration*

*When the PHA is purchasing services valued at more than \$2,000 that will entail the use of contract personnel working on PHA property, the PHA must comply with applicable rules related to prevailing wage rates:*

- a. *When the work involves construction, rehabilitation, reconstruction, redecoration, or other similar types of work, the Davis Bacon wage rates must be used;*
- b. *When the work to be performed is maintenance work such as making ready vacant units or lawn care, HUD-determined wage rates will be used;*
- c. *When the purchase order for the work is issued, the requirement for the contractor to pay all workers the appropriate wages will be attached. The contractor will be required to turn in weekly payrolls until the job is completed and the PHA will conduct interviews with workers on the job (using the HUD 11 form) to ensure that the appropriate wages are being paid.*
- d. *The PHA is responsible for obtaining the appropriate wage decisions from HUD before a small purchase valued at over \$2,000 is authorized.*

**B. Small Purchases (over \$10,000 but not exceeding \$50,000)**

1) *General*

- a. *PHA shall obtain a reasonable number of quotes, preferably three.*
- b. *To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources.*
- c. *Award shall be made to the qualified vendor that provides the best value to the PHA. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file demonstrating why the vendor providing the lowest price was not selected.*

- d. *The PHA shall not break down jobs into several purchases that are less than the applicable threshold merely to: (1) permit use of the Small Purchase procedures or (2) avoid any requirements that apply to purchases that exceed the Small Purchase threshold. In order for the PHA to use the Small Purchase method, the aggregate amount paid to one vendor during a year must not exceed the Small Purchase threshold.*
- e. *All small procurements under which contract employees will work on PHA property are subject to wage rate requirements. For construction work, the Davis Bacon wage rates apply, for maintenance work, the HUD-determined wage rates apply. The contract/purchase order with the vendor must include the applicable wage decisions and describe the actions the vendor must take to comply.*

2) **Cost Analysis**

- a. *A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required.*
- b. *If a reasonable number of quotes is not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, or any other reasonable basis.*

3) **Solicitation**

*Quotes may be obtained orally (either in person or by phone), by fax, in writing, e-mail or E-Procurement.*

**C. Sealed Bidding (contracts over \$50,000)**

*Sealed Bidding shall be used for all contracts that exceed the Small Purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this Policy. Under sealed bids, the PHA publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the Invitation for Bid (IFB), is the lowest in price. Sealed Bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$50,000. Sealed Bidding will not be used for Architectural and Engineering (A/E) services.*

1) **Conditions for Use**

*Contracts shall be awarded based on competitive Sealed Bidding if the following conditions are present:*

- a. a complete, adequate and realistic specification or purchase description is available;*
- b. two or more responsible bidders are willing and able to compete effectively for the work;*
- c. the procurement lends itself to a firm fixed price contract; and*
- d. the selection of the successful bidder can be made principally on the lowest price.*

*2) Solicitation and Receipt of Bids*

- a. An Invitation for Bids (IFB) shall be issued, inviting qualified bidders to pick up the bid package, which will include plans, specifications, general and special conditions, bid bond, performance and payment bond, civil rights requirements, Section 3 requirements, bidder qualification statements, wage rate decisions, non-collusive affidavits, and all contractual terms and conditions applicable to the procurement, including a statement that award will be made to the lowest responsible, responsive bidder whose bid meets the requirements of the bid documents.*
- b. The IFB shall state the time and place for both the receipt of bids and the public bid opening.*
- c. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening.*
- d. A bidder may withdraw or modify its bid at any time prior to bid opening.*

*3) Bid Opening and Award*

- a. Bids shall be opened publicly and in the presence of at least one witness.*
- b. An abstract of bids shall be recorded and the bids shall be available for public inspection.*
- c. Award shall be made as provided in the bid document by written notice to the successful bidder.*

- d. *If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method stated in the bid documents.*
  - e. *If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price and the PHA receives permission from the HUD Field Office to award to the sole responsive bidder.*
- 4) *Mistakes in Bids*
- a. *Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening.*
  - b. *After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended.*
  - c. *A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.*
  - d. *All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer.*
  - e. *After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the PHA or fair competition shall be permitted.*
- 5) *Cost and Price Analysis*
- a. *For the sealed bidding process, the PHA is required to perform an Independent Cost Estimate. If at least one responsive and responsible bid is received that does not exceed the independent cost estimate, it is deemed that the bid process has been successful.*

- b. *Where sufficient bids are not received, and when the bid received is substantially more than the Independent Cost Estimate (ICE), and where the PHA cannot reasonably determine price reasonableness, the PHA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.*

6) *Method of Advertising*

- a. *Solicitation must be done publicly.*
- b. *The PHA must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.*

1. *Advertising in newspapers or other print mediums of local or general circulations, not less than once each week for two consecutive weeks.*

2. *Advertising in various trade journals or publications (for construction)*

3. *E-Procurement. The PHA may conduct its public procurements through the Internet using procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR 200.317 - 200.326, State and local requirements, and this Policy.*

- c. *Notices/advertisements should state, at a minimum*

1. *the place, date and time that the bids are due. A minimum of 30 days shall generally be provided for preparation and submission of sealed bids. The Executive Director may allow for a shorter period under extraordinary circumstances.*

2. *the solicitation number*

3. *a contact who can provide a copy of and information about the solicitation*

4. *a brief description of the needed items*

7) *Bonds (required for construction contracts that exceed \$50,000)*

- a. *offerors shall be required to submit a bid bond or a cash bid guarantee from each bidder equivalent to 5% of the bid price.*

- b. *the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:*
  - 1. *A performance and payment bond in a penal sum of 100% of the contract price; or*
  - 2. *Separate performance and payment bonds, each for 50% or more of the contract price; or*
  - 3. *A 20% cash escrow; or*
  - 4. *A 25% irrevocable letter of credit.*
- c. *These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State where the work is to be performed. Individual sureties shall not be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.*

**D. Competitive Proposals**

**Competitive Proposal** is the preferred method for procuring professional services that will exceed the Small Purchase threshold. Award is normally made on the basis of the proposal that represents the best overall value to the PHA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

1) *Permits*

- a. *Consideration of technical factors other than price*
- b. *Discussion with offerors concerning offers submitted*
- c. *Negotiation of contract price or estimated cost and other contract terms and conditions.*
- d. *Revision of proposals before the final contractor selection*
- e. *Withdrawal of an offer at any time up until the point of award*

2) *Conditions for Use*

*Competitive Proposals (including turn-key proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the PHA determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.*

3) *Solicitation Method - Request for Proposal (RFP)*

- a. *The Request for Proposal (RFP) shall clearly identify the relative importance of price and other evaluation factors and subfactors, including the weight given to each technical factor and subfactor.*
- b. *A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued.*
- c. *Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.*
- d. *PHA may assign price a specific weight in the evaluation criteria or the PHA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.*

4) *Advertising*

- a. *Solicitation must be done publicly.*
- b. *The PHA must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.*
  - 1. *Advertising in newspapers or other print mediums of local or general circulations, not less than once each week for two consecutive weeks.*
  - 2. *Advertising in various trade journals or publications (for construction)*

3. *E-Procurement. The PHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR 200.317 - 200.326, State and local requirements, and this Policy.*

c. *Notices/advertisements should state, at a minimum*

1. *the place, date and time that the proposals are due. A minimum of 15 days shall generally be provided for preparation and submission of Competitive Proposals. The Executive Director may allow for a shorter period under extraordinary circumstances.*

2. *the solicitation number*

3. *a contact who can provide a copy of and information about the solicitation*

4. *a brief description of the needed items*

5) *Evaluation*

a. *The proposals shall be evaluated only on the criteria stated in the RFP.*

b. *Where not apparent from the evaluation criteria, the PHA shall establish an Evaluation Plan for each RFP.*

c. *Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement.*

d. *An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.*

6) *Negotiations*

*Negotiations are exchanges (in either competitive or sole source environment) between the PHA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract.*

a. *Negotiations shall be conducted with all offerors who submit*



*a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP.*

*b. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals.*

*c. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal.*

*d. A common deadline shall be established for receipt of proposal revisions based on negotiations.*

*e. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions.*

*1. Discussions are tailored to each offeror's proposal, and shall be conducted by the Contracting Officer with each offeror within the competitive range.*

*2. The primary object of discussions is to maximize the PHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation.*

*3. The Contracting Officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the Contracting Officer, be altered or explained to enhance materially the proposer's potential for award.*

*4. The scope and extent of discussions are a matter of the Contracting Officer's judgment.*

*5. The Contracting Officer may inform an offeror that its price is considered by the PHA to be too high, or too low, and reveal the results of the analysis supporting that conclusion.*

*6. It is also permissible to indicate to all offerors the cost or*

*price that the government's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.*

7) *Cost and Price Analysis*

- a. *The presence of adequate competition should generally be sufficient to establish price reasonableness.*
- b. *Where sufficient bids are not received, the PHA must compare the price with the ICE.*
- c. *For Competitive Proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, the PHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.*

8) *Award*

*Award shall be made on the basis of the proposal that represents the best overall value to the PHA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price, and provided that the price is within the maximum total project budgeted amount established for the specific property or activity.*

9) *Architect-Engineer Services*

- a. *The PHA must contract for A/E services using Qualification Based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ).*
- b. *Sealed Bidding shall not be used for A/E solicitations.*
- c. *Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.*
- d. *Price is not used as a selection factor under this method.*
- e. *QBS procedures **shall not** be used to purchase other types of services, other than Energy Performance Contracting and Developer services.*

**F. Non-Competitive Proposals**

1) *Conditions for Use*

*Procurement by Non-Competitive Proposals (sole-source) may be used **only** when the award of a contract is not feasible using Small Purchase procedures, Sealed bidding, cooperative purchasing, or Competitive Proposals, **and** if one of the following applies:*

- a. the item is available from only a single source, based on good faith review of available sources;*
- b. an emergency exists that seriously threatens the public health, welfare, or safety of the property, or would otherwise cause serious injury to the PHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;*
- c. HUD authorizes the use of Non-Competitive Proposals; or*
- d. after solicitation of a number of sources, competition is determined inadequate.*

2) *Justification*

- a. Each procurement based on Non-Competitive Proposals shall be supported by a written justification for the selection of this method.*
- b. The justification shall be approved in writing by the responsible Contracting Officer.*
- c. Poor planning or lack of planning is not justification for emergency or sole-source procurements.*
- d. The justification, to be included in the procurement file, should include the following information:*
  - 1. Description of the requirement;*
  - 2. History of prior purchases and their nature (competitive vs. Non-Competitive );*
  - 3. The specific exception in **2 CFR 200.320(f)(1)-(4)** which applies;*

4. *Statement as to the unique circumstances that require award by Non-Competitive Proposals;*

5. *Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);*

6. *Statement as to efforts that will be taken in the future to promote competition for the requirement;*

7. *Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and*

8. *Price Reasonableness. The reasonableness of the price for all procurements based on Non-Competitive Proposals shall be determined by performing an analysis, as described in this Policy.*

### **VIII. CANCELLATION OF SOLICITATIONS**

#### **A. Before Bids/Offers Due**

*An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:*

- 1) *The supplies, services or construction activities are no longer required;*
- 2) *The funds are no longer available;*
- 3) *Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or*
- 4) *Other similar reasons.*

#### **B. After Bids/Proposals Received**

*A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:*

- 1) *The supplies, services or construction activities are no longer required;*
- 2) *Ambiguous or otherwise inadequate specifications were part of the solicitation;*
- 3) *All factors of significance to the PHA were not considered;*

- 4) *Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;*
- 5) *There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or*
- 6) *For good cause of a similar nature when it is in the best interest of the PHA.*

### **C. Reasons**

*The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.*

### **D. Notice of Cancellation**

*A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.*

### **E. Bids Unreasonable**

*If all otherwise acceptable bids received in response to an IFB are at unreasonable prices an analysis should be conducted to see if there is a problem in either the specifications or the PHA's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation and either*

- 1) *Re-solicit using an RFP; or*
- 2) *Complete the procurement by using the Competitive Proposal method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of the PHA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.*

### **F. Problems with Specs**

*If problems are found with the specifications, PHA should cancel the solicitation, revise the specifications and re-solicit using a new IFB.*

## **IX. CONTRACTOR QUALIFICATIONS AND DUTIES**

### **A. Contractor Responsibility**

*PHA shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:*

- 1) Have adequate financial resources to perform the contract, or the ability to obtain them;*
- 2) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;*
- 3) Have a satisfactory performance record;*
- 4) Have a satisfactory record of integrity and business ethics;*
- 5) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;*
- 6) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,*
- 7) Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP.*

*If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.*

**B. Suspension and Debarment**

*Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations or by other Federal agencies, e.g., Dept of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings. Prior to issuance of a contract, PHA staff shall, as detailed in Section 10.2H1 and 10.2.H2 of HUD Handbook 7460.8 REV 2, conduct the required searches within the HUD Limited Denial of Participation (LDP) system and the U. S. General Services Administration System for Award Management (SAM) and place within the applicable contract file a printed copy of the results of each such search.*

**C. Vendor Lists**

*All interested businesses shall be given the opportunity to be included on vendor mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.*

## **X. CONTRACT PRICING ARRANGEMENTS**

### **A. Contract Types**

- 1) *Any type of contract which is appropriate to the procurement and which will promote the best interests of the PHA may be used, **provided the cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used.***
- 2) *All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and the PHA.*
- 3) *For all cost reimbursement contracts, PHA must include a written determination as to why no other contract type is suitable.*
- 4) *Further, the contract must include a ceiling price that the contractor exceeds at its own risk.*

### **B. Options**

*Options for additional quantities or performance periods may be included in contracts, provided that:*

- 1) *The option is contained in the solicitation;*
- 2) *The option is a unilateral right of the PHA;*
- 3) *The contract states a limit on the additional quantities and the overall term of the contract;*
- 4) *The options are evaluated as part of the initial competition;*
- 5) *The contract states the period within which the options may be exercised;*
- 6) *The options may be exercised only at the price specified in or reasonably determinable from the contract; and*
- 7) *The options may be exercised only if determined to be more advantageous to the PHA than conducting a new procurement.*

## **XI. CONTRACT CLAUSES**

### **A. Terms**

*All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the PHA .*

### **B. Forms/Clauses**

*Additionally, the forms HUD-5369, 5369-A, 5369-B, HUD-5370, 5370-C Sect. I and II, HUD-51915 and 51915-A , which contain all HUD-required clauses and certifications for contracts of more than \$50,000, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by this PHA.*

### **C. Required Contract Clauses**

*The PHA shall ensure that each contract executed by the PHA contains the required contract clauses detailed within 2 CFR 200.326 Appendix II.*

## **XII. CONTRACT ADMINISTRATION**

*The PHA shall maintain a system of contract administration designed to ensure that contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 2210.18.*

## **XIII. SPECIFICATIONS**

### **A. General**

- 1) All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying needs.*
- 2) Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items.*
- 3) Function or performance specifications are preferred.*
- 4) Detailed product specifications shall be avoided whenever possible.*
- 5) Consideration shall be given to consolidating or breaking out*



*procurements to obtain a more economical purchase.*

- 6) *For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.*

## **B. Limitation**

*The following types of specifications shall be avoided:*

- 1) *geographic restrictions not mandated or encouraged by applicable Federal law (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available);*
- 2) *brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).*
- 3) *Nothing in this Procurement Policy shall preempt any State licensing laws.*
- 4) *Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur.*

## **XIII. CONTRACT MODIFICATIONS**

*A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bidding, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$50,000.*

## **XIV. APPEALS AND REMEDIES**

### **A. General**

*It is PHA policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.*

### **B. Informal Appeals Procedure**

*The PHA shall adopt an informal bid protest/appeal procedure for contracts of \$50,000 or less. Under these procedures, the bidder/contractor may request to meet with the appropriate Contracting Officer.*

**C. Formal Appeals Procedure**

*A formal appeals procedure shall be established for solicitations/contracts of more than \$50,000.*

**1) Bid Protest**

- a. Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy.*
- b. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contract receives notice of the contract award, or the protest will not be considered.*
- c. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter.*
- d. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.*

**2) Contractor Claims**

- a. All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision.*
- b. The contractor may request a conference on the claim.*
- c. The Contracting Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in the PHA.*
- d. Contractor claims shall be governed by the Changes clause in the form HUD-5370.*

**XV. COOPERATIVE PURCHASING/INTERGOVERNMENTAL AGREEMENTS**

*The PHA may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The PHA may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with **2 CFR 200.317 - 200.326**.*

#### **XVI. PETTY CASH AND CREDIT (OR PURCHASING) CARDS**

*Petty cash may be used for purchases of less than \$50. The person or persons who manage the petty cash "bank" will issue cash to staff to buy very small items and will save receipts for all petty cash purchases. As the petty cash bank is depleted it will be refilled monthly based upon the receipts.*

*PHA credit cards will be issued only to persons who have Board authorization. The credit cards can be used for micro purchases of items that are in the PHA's approved budget (value of less than \$10,000). Typically credit cards are used for employee travel, but they are also very useful in natural disasters when normal purchasing methods may be disrupted.*

#### **XVII. ASSISTANCE TO SMALL AND OTHER DISADVANTAGED BUSINESSES**

##### **A. Required Efforts**

*Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, all feasible efforts shall be made to ensure that small and minority-owned businesses, women's business enterprises, and other individuals or firms located in or owned in substantial part by persons residing in the area of the project are used when possible. Such efforts shall include, but shall not be limited to:*

- 1) Including such firms, when qualified, on solicitation mailing lists;*
- 2) Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;*
- 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;*

- 4) *Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;*
- 5) *Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;*
- 6) *Including in contracts, to the greatest extent feasible, a clause requiring contractors to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in **24 CFR Part 135** (so-called Section 3 businesses); and*
- 7) *Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.*
- 8) *Establishing goals periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in prime contracts and subcontracting opportunities.*

**B. Definition**

- 1) *A small business is defined as a business which is:*
  - a. *independently owned;*
  - b. *not dominant in its field of operation; and*
  - c. *not an affiliate or subsidiary of a business dominant in its field of operation.*

*The size standards in 13 CFR 121 shall be used, unless the PHA determines that their use is inappropriate.*

- 2) *A minority owned business is defined as a business which is:*
  - a. *at least 51% owned by one or more minority group members;*  
*or*
  - b. *in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members and whose management and daily business operations are controlled by one or more such individuals.*

*Minority group members include, but are not limited to, African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.*

- 3) *A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are US citizens and who also control or operate the business.*
- 4) *A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the US Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.*
- 5) *A business concern located in the area of a project, is defined as an individual or firm:*
  - a. *located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15;*
  - b. *listed on HUD's registry of eligible business concerns; and*
  - c. *meeting the definition of small business above.*
- 6) *A business concern owned in substantial part by persons residing in the area of the project is defined as a business concern which is:*
  - a. *51% or more owned by persons residing with the Section 3 covered project;*
  - b. *owned by persons considered by the US Small Business Administration to be socially or economically disadvantaged;*
  - c. *listed in HUD's registry of eligible business concerns; and*
  - d. *meeting the definition of small business above.*

## **XVIII. DOCUMENTATION**

### **A. Record Content**

The PHA must maintain records sufficient to detail the significant history of each procurement action. These records **shall** include, but **shall not** necessarily be limited to, the following:

- 1) Rationale for the method of procurement (if not self-evident);
- 2) Rationale of contract pricing arrangement (also if not self-evident);
- 3) Reason for accepting or rejecting the bids or offers;
- 4) Basis for the contract price;
- 5) A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- 6) Basis for contract modifications; and
- 7) Related contract administration actions.

#### **B. Level of Documentation**

The level of documentation included in the procurement file should be commensurate with the value of the procurement.

#### **C. Retention**

Records are to be retained for a period of three years after final payment and all matters pertaining to the contract are closed.

### **XX. DISPOSITION OF SURPLUS PROPERTY**

Property no longer necessary for the PHA's purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable Federal, state, and local laws and regulations and the PHA's Disposition Policy.

### **XXI. FUNDING AVAILABILITY**

Before initiating any contract, the PHA shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification and that the purpose for the procurement has been approved in a PHA budget.

## **XXII. ACRONYMS**

*CAS Cost Accounting Standards*

*CFR Code of Federal Regulations*

*CMIA Cash Management Improvement Act*

*COG Councils Of Governments*

*COSO Committee of Sponsoring Organizations of the Treadway Commission*

*EPA Environmental Protection Agency*

*ERISA Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301-1461)*

*EUI Energy Usage Index*

*F&A Facilities and Administration*

*FAC Federal Audit Clearinghouse*

*FAIN Federal Award Identification Number*

*FAPIIS Federal Awardee Performance and Integrity Information System*

*FAR Federal Acquisition Regulation*

*FFATA Federal Funding Accountability and Transparency Act of 2006 or Transparency Act - Public Law 109-282, as amended by section 6202(a) of Public Law 110-252 (31 U.S.C. 6101)*

*FICA Federal Insurance Contributions Act*

*FOIA Freedom of Information Act*

*FR Federal Register*

*FTE Full-time equivalent*

*GAAP Generally Accepted Accounting Principles*

*GAGAS Generally Accepted Government Auditing Standards*

*GAO Government Accountability Office*

*GOCO Government owned, contractor operated*

*GSA General Services Administration*

*IBS Institutional Base Salary*

*IHE Institutions of Higher Education*

*IRC Internal Revenue Code*

*ISDEAA Indian Self-Determination and Education and Assistance Act*

*MTC Modified Total Cost*

*MTDC Modified Total Direct Cost*

*NFE Non-Federal Entity*

*OMB Office of Management and Budget*

*PII Personally Identifiable Information*

*PMS Payment Management System*

*PRHP Post-retirement Health Plans*

*PTE Pass-through Entity*

*REUI Relative Energy Usage Index*

*SAM System for Award Management*

*SFA Student Financial Aid*

*SNAP Supplemental Nutrition Assistance Program*

*SPOC Single Point of Contact*

*TANF Temporary Assistance for Needy Families*

*TFM Treasury Financial Manual*

*U.S.C. United States Code*

*VAT Value Added Tax*

## **XXII. DEFINITIONS**



**The following is a list of key procurement and contracting terms and definitions used throughout this Policy.**

*Acquisition cost* means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

*Advance payment* means a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

*Allocation* means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

*Assistance listings* refers to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration, formerly known as the Catalog of Federal Domestic Assistance (CFDA).

*Assistance listing number* means a unique number assigned to identify a Federal Assistance Listings, formerly known as the CFDA Number.

*Assistance listing program title* means the title that corresponds to the Federal Assistance Listings Number, formerly known as the CFDA program title.

*Audit finding* means deficiencies which the auditor is required by § 200.516(a) to report in the schedule of findings and questioned costs.

*Auditee* means any non-Federal entity that expends Federal awards which must be audited under subpart F of this part.

*Auditor* means an auditor who is a public accountant or a Federal, State, local government, or Indian tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

*Budget* means the financial plan for the Federal award that the Federal awarding agency or pass-through entity approves during the Federal award process or in subsequent

*amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal awarding agency or pass-through entity.*

*Budget period means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which recipients are authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.*

*Capital assets means:*

*(1) Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:*

*(i) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and*

*(ii) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).*

*(2) For purpose of this part, capital assets do not include intangible right-to-use assets (per GASB) and right-to-use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property and/or equipment for a period of time under a lease contract. See also § 200.465.*

*Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.*

*Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a State or local government or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.*

*Claim means, depending on the context, either:*

*(1) A written demand or written assertion by one of the parties to a Federal award seeking as a matter of right:*

*(i) The payment of money in a sum certain;*

- (ii) The adjustment or interpretation of the terms and conditions of the Federal award; or*
- (iii) Other relief arising under or relating to a Federal award.*

*(2) A request for payment that is not in dispute when submitted.*

*Class of Federal awards* means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of non-Federal entity or group of non-Federal entities to which specific provisions or exceptions may apply.

*Closeout* means the process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in § 200.344.

*Cluster of programs* means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by OMB in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a State must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 200.332(a). A cluster of programs must be considered as one program for determining major programs, as described in § 200.518, and, with the exception of R&D as described in § 200.501(c), whether a program-specific audit may be elected.

*Cognizant agency for audit* means the Federal agency designated to carry out the responsibilities described in § 200.513(a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit can be found on the Federal Audit Clearinghouse (FAC) website.

*Cognizant agency for indirect costs* means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this part on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies see the following:

- (1) For Institutions of Higher Education (IHEs): Appendix III to this part, paragraph C.11.*
- (2) For nonprofit organizations: Appendix IV to this part, paragraph C.2.a.*
- (3) For State and local governments: Appendix V to this part, paragraph F.1.*
- (4) For Indian tribes: Appendix VII to this part, paragraph D.1.*

*Compliance supplement* means an annually updated authoritative source for auditors that serves to identify existing important compliance requirements that the Federal

*Government expects to be considered as part of an audit. Auditors use it to understand the Federal program's objectives, procedures, and compliance requirements, as well as audit objectives and suggested audit procedures for determining compliance with the relevant Federal program.*

*Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information. See also the definitions of supplies and information technology systems in this section.*

*Contract means, for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award. For additional information on subrecipient and contractor determinations, see § 200.331. See also the definition of subaward in this section.*

*Contractor means an entity that receives a contract as defined in this section.*

*Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency and a recipient or a pass-through entity and a subrecipient that, consistent with 31 U.S.C. 6302-6305:*

*(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;*

*(2) Is distinguished from a grant in that it provides for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.*

*(3) The term does not include:*

*(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or*

*(ii) An agreement that provides only:*

*(A) Direct United States Government cash assistance to an individual;*

*(B) A subsidy;*

*(C) A loan;*

*(D) A loan guarantee; or*

*(E) Insurance.*

*Cooperative audit resolution* means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

(1) A strong commitment by Federal agency and non-Federal entity leadership to program integrity;

(2) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies;

(3) A focus on current conditions and corrective action going forward;

(4) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(5) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

*Corrective action* means action taken by the auditee that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

*Cost allocation plan* means central service cost allocation plan or public assistance cost allocation plan.

*Cost objective* means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a major function of the non-Federal entity, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in subpart E of this part. See also the definitions of final cost objective and intermediate cost objective in this section.

*Cost sharing or matching* means the portion of project costs not paid by Federal funds or contributions (unless otherwise authorized by Federal statute). See also § 200.306.

*Cross-cutting audit finding* means an audit finding where the same underlying condition or issue affects all Federal awards (including Federal awards of more than one Federal awarding agency or pass-through entity).

*Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.*

*Discretionary award means an award in which the Federal awarding agency, in keeping with specific statutory authority that enables the agency to exercise judgment ("discretion"), selects the recipient and/or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected on a non-competitive basis, as appropriate.*

*Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See also the definitions of capital assets, computing devices, general purpose equipment, information technology systems, special purpose equipment, and supplies in this section.*

*Expenditures means charges made by a non-Federal entity to a project or program for which a Federal award was received.*

*(1) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.*

*(2) For reports prepared on a cash basis, expenditures are the sum of:*

*(i) Cash disbursements for direct charges for property and services;*

*(ii) The amount of indirect expense charged;*

*(iii) The value of third-party in-kind contributions applied; and*

*(iv) The amount of cash advance payments and payments made to subrecipients.*

*(3) For reports prepared on an accrual basis, expenditures are the sum of:*

*(i) Cash disbursements for direct charges for property and services;*

*(ii) The amount of indirect expense incurred;*

*(iii) The value of third-party in-kind contributions applied; and*

*(iv) The net increase or decrease in the amounts owed by the non-Federal entity for:*

*(A) Goods and other property received;*

*(B) Services performed by employees, contractors, subrecipients, and other payees; and*

*(C) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.*

*Federal agency means an "agency" as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).*

*Federal Audit Clearinghouse (FAC) means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the information required by subpart F of this part.*

*Federal award has the meaning, depending on the context, in either paragraph (1) or (2) of this definition:*

*(1) (i) The Federal financial assistance that a recipient receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101; or*

*(ii) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101.*

*(2) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (2) of the definition of Federal financial assistance in this section, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.*

*(3) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).*

*(4) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.*

*Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency.*

*Federal awarding agency means the Federal agency that provides a Federal award directly to a non-Federal entity.*

*Federal financial assistance means*

*(1) Assistance that non-Federal entities receive or administer in the form of:*

*(i) Grants;*

*(ii) Cooperative agreements;*

- (iii) Non-cash contributions or donations of property (including donated surplus property);*
- (iv) Direct appropriations;*
- (v) Food commodities; and*
- (vi) Other financial assistance (except assistance listed in paragraph (2) of this definition).*

*(2) For § 200.203 and subpart F of this part, Federal financial assistance also includes assistance that non-Federal entities receive or administer in the form of:*

- (i) Loans;*
- (ii) Loan Guarantees;*
- (iii) Interest subsidies; and*
- (iv) Insurance.*

*(3) For § 200.216, Federal financial assistance includes assistance that non-Federal entities receive or administer in the form of:*

- (i) Grants;*
- (ii) Cooperative agreements;*
- (iii) Loans; and*
- (iv) Loan Guarantees.*

*(4) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in § 200.502(h) and (i).*

*Federal interest means, for purposes of § 200.330 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:*

- (1) The percentage of Federal participation in the total cost of the real property, equipment, or supplies; and*
- (2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.*

*Federal program means:*

- (1) All Federal awards which are assigned a single Assistance Listings Number.*



*(2) When no Assistance Listings Number is assigned, all Federal awards from the same agency made for the same purpose must be combined and considered one program.*

*(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:*

*(i) Research and development (R&D);*

*(ii) Student financial aid (SFA); and*

*(iii) "Other clusters," as described in the definition of cluster of programs in this section.*

*Federal share means the portion of the Federal award costs that are paid using Federal funds.*

*Final cost objective means a cost objective which has allocated to it both direct and indirect costs and, in the non-Federal entity's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a non-Federal entity. See also the definitions of cost objective and intermediate cost objective in this section.*

*Financial obligations, when referencing a recipient's or subrecipient's use of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions that require payment.*

*Fixed amount awards means a type of grant or cooperative agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. See §§ 200.102(c), 200.201(b), and 200.333.*

*Foreign organization means an entity that is:*

*(1) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;*

*(2) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;*

*(3) A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities,*

*church, synagogue, mosque or other similar entities organized primarily for religious purposes; or*

*(4) An organization located in a country other than the United States not recognized as a foreign public entity.*

*Foreign public entity means:*

*(1) A foreign government or foreign governmental entity;*

*(2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288-288f);*

*(3) An entity owned (in whole or in part) or controlled by a foreign government; or*

*(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.*

*General purpose equipment means equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also the definitions of equipment and special purpose equipment in this section.*

*Generally accepted accounting principles (GAAP) has the meaning specified in accounting standards issued by the GASB and the FASB.*

*Generally accepted government auditing standards (GAGAS), also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.*

*Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:*

*(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;*

*(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.*

*(3) Does not include an agreement that provides only:*

*(i) Direct United States Government cash assistance to an individual;*

*(ii) A subsidy;*

*(iii) A loan;*

*(vi) A loan guarantee; or*

*(v) Insurance.*

*Highest level owner means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest-level owner as defined in the Federal Acquisition Regulations (FAR) (48 CFR 52.204-17).*

*Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.*

*Improper payment means:*

*(1) Any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements.*

*(i) Incorrect amounts are overpayments or underpayments that are made to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for an incorrect amount, and duplicate payments). An improper payment also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law).*

*Note 1 to paragraph (1)(i) of this definition. Applicable discounts are only those discounts where it is both advantageous and within the agency's control to claim them.*

*(ii) When an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment should also be considered an improper payment. When establishing documentation requirements for payments, agencies should ensure that all documentation requirements are necessary and should refrain from imposing additional burdensome documentation requirements.*

*(iii) Interest or other fees that may result from an underpayment by an agency are not considered an improper payment if the interest was paid correctly. These payments are generally separate transactions and may be necessary under certain statutory, contractual, administrative, or other legally applicable requirements.*

*(iv) A "questioned cost" (as defined in this section) should not be considered an improper*

*payment until the transaction has been completely reviewed and is confirmed to be improper.*

*(v) The term "payment" in this definition means any disbursement or transfer of Federal funds (including a commitment for future payment, such as cash, securities, loans, loan guarantees, and insurance subsidies) to any non-Federal person, non-Federal entity, or Federal employee, that is made by a Federal agency, a Federal contractor, a Federal grantee, or a governmental or other organization administering a Federal program or activity.*

*(vi) The term "payment" includes disbursements made pursuant to prime contracts awarded under the Federal Acquisition Regulation and Federal awards subject to this part that are expended by recipients.*

*(2) See definition of improper payment in OMB Circular A-123 appendix C, part I A (1) "What is an improper payment?" Questioned costs, including those identified in audits, are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123 appendix C.*

*Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.*

*Institutions of Higher Education (IHEs) is defined at 20 U.S.C. 1001.*

*Indirect (facilities & administrative (F&A)) costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.*

*Indirect cost rate proposal means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate as described in appendices III through VII and appendix IX to this part.*

*Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also the definitions of computing devices and equipment in this section.*

*Intangible property means property having no physical existence, such as trademarks,*

*copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).*

*Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See also the definitions of cost objective and final cost objective in this section.*

*Internal controls for non-Federal entities means:*

*(1) Processes designed and implemented by non-Federal entities to provide reasonable assurance regarding the achievement of objectives in the following categories:*

*(i) Effectiveness and efficiency of operations;*

*(ii) Reliability of reporting for internal and external use; and*

*(iii) Compliance with applicable laws and regulations.*

*(2) Federal awarding agencies are required to follow internal control compliance requirements in OMB Circular No. A-123, Management's Responsibility for Enterprise Risk Management and Internal Control.*

*Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity, except as used in the definition of program income in this section.*

*(1) The term "direct loan" means a disbursement of funds by the Federal Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.*

*(2) The term "direct loan obligation" means a binding agreement by a Federal awarding agency to make a direct loan when specified conditions are fulfilled by the borrower.*

*(3) The term "loan guarantee" means any Federal Government guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.*

*(4) The term "loan guarantee commitment" means a binding agreement by a Federal awarding agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.*

*Local government* means any unit of government within a state, including a:

(1) County;

(2) Borough;

(3) Municipality;

(4) City;

(5) Town;

(6) Township;

(7) Parish;

(8) Local public authority, including any public housing agency under the United States Housing Act of 1937;

(9) Special district;

(10) School district;

(11) Intrastate district;

(12) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and

(13) Any other agency or instrumentality of a multi-, regional, or intra-State or local government.

*Major program* means a Federal program determined by the auditor to be a major program in accordance with § 200.518 or a program identified as a major program by a Federal awarding agency or pass-through entity in accordance with § 200.503(e).

*Management decision* means the Federal awarding agency's or pass-through entity's written determination, provided to the auditee, of the adequacy of the auditee's proposed corrective actions to address the findings, based on its evaluation of the audit findings and proposed corrective actions.

*Micro-purchase* means a purchase of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases comprise a subset of a non-Federal entity's small purchases as defined in § 200.320.

*Micro-purchase threshold* means the dollar amount at or below which a non-Federal entity

*may purchase property or services using micro-purchase procedures (see § 200.320). Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the non-Federal entity and approved by the cognizant agency for indirect costs.*

*Modified Total Direct Cost (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.*

*Non-discretionary award means an award made by the Federal awarding agency to specific recipients in accordance with statutory, eligibility and compliance requirements, such that in keeping with specific statutory authority the agency has no ability to exercise judgement ("discretion"). A non-discretionary award amount could be determined specifically or by formula.*

*Non-Federal entity (NFE) means a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.*

*Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:*

*(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;*

*(2) Is not organized primarily for profit; and*

*(3) Uses net proceeds to maintain, improve, or expand the operations of the organization.*

*Notice of funding opportunity means a formal announcement of the availability of Federal funding through a financial assistance program from a Federal awarding agency. The notice of funding opportunity provides information on the award, who is eligible to apply, the evaluation criteria for selection of an awardee, required components of an application, and how to submit the application. The notice of funding opportunity is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a "program announcement," "notice of funding availability," "broad agency announcement," "research announcement," "solicitation," or some other term.*

*Office of Management and Budget (OMB) means the Executive Office of the President, Office of Management and Budget.*

*Oversight agency for audit* means the Federal awarding agency that provides the predominant amount of funding directly (direct funding) (as listed on the schedule of expenditures of Federal awards, see § 200.510(b)) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total Federal expenditures (as direct and sub-awards) by the non-Federal entity, then the Federal agency with the predominant amount of total funding is the designated oversight agency for audit. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 200.513(b).

*Participant support costs* means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

*Pass-through entity (PTE)* means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

*Performance goal* means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

*Period of performance* means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the period of performance in the Federal award per § 200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period.

*Personal property* means property other than real property. It may be tangible, having physical existence, or intangible.

*Personally Identifiable Information (PII)* means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.



*Program income* means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(f). (See the definition of period of performance in this section.) Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also § 200.407. See also 35 U.S.C. 200-212 "Disposition of Rights in Educational Awards" applies to inventions made under Federal awards.

*Project cost* means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

*Property* means real property or personal property. See also the definitions of real property and personal property in this section.

*Protected Personally Identifiable Information (Protected PII)* means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed. See also the definition of Personally Identifiable Information (PII) in this section.

*Questioned cost* means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

(4) Questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123 appendix C. (See also the definition of Improper payment in this section).

*Real property* means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.

*Recipient* means an entity, usually but not limited to non-Federal entities that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.

*Renewal award* means an award made subsequent to an expiring Federal award for which the start date is contiguous with, or closely follows, the end of the expiring Federal award. A renewal award's start date will begin a distinct period of performance.

*Research and Development (R&D)* means all research activities, both basic and applied, and all development activities that are performed by non-Federal entities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

*Simplified acquisition threshold* means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods (see § 200.320). Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold for procurement activities administered under Federal awards is set by the FAR at 48 CFR part 2, subpart 2.1. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. However, in no circumstances can this threshold exceed the dollar value established in the FAR (48 CFR part 2, subpart 2.1) for the simplified acquisition threshold. Recipients should determine if local government laws on purchasing apply.

*Special purpose equipment* means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. See also the definitions of equipment and general purpose equipment in this section.

*State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

*Student Financial Aid (SFA)* means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070-1099d), which are administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar

*Federal awards to students on a competitive basis, or for specified studies or research.*

*Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.*

*Subrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.*

*Subsidiary means an entity in which more than 50 percent of the entity is owned or controlled directly by a parent corporation or through another subsidiary of a parent corporation.*

*Supplies means all tangible personal property other than those described in the definition of equipment in this section. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. See also the definitions of computing devices and equipment in this section.*

*Telecommunications cost means the cost of using communication and telephony technologies such as mobile phones, land lines, and internet.*

*Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance. A lack of available funds is not a termination.*

*Third-party in-kind contributions means the value of non-cash contributions (i.e., property or services) that -*

*(1) Benefit a federally-assisted project or program; and*

*(2) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.*

*Unliquidated financial obligations means, for financial reports prepared on a cash basis, financial obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are financial obligations incurred by the non-Federal entity for which an expenditure has not been recorded.*

*Unobligated balance means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated financial obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal*

*awarding agency or pass-through entity authorized the non-Federal entity to obligate.*

*Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal's budget on the part of the non-Federal entity and that becomes a binding requirement of Federal award. See also § 200.306.*

Sample Letter for transmitting your Code of Conduct statement.

To determine if you need to send the letter go to:

<https://www.hud.gov/sites/dfiles/SPM/documents/CodeofConductE-Library3.1.2023.xlsx>

Clicking on the link above will download the Library to your computer, Search for your PHA name. If your PHA is not listed you must send the letter with the following information and the following documents:

For Public Housing,

Send Section 1 Subsections 5 and 5a plus the Procurement policy from the ACOP.

For the HCV program (Vouchers)

Send Section 1 Subsections 2 and 4 plus the Procurement policy.

You should only have to send one letter for your PHA.

The letter should have the following on the PHA letterhead.

1. The Organization UEI
2. Organization Legal Business Name (from SAM.gov)
3. Complete mailing address
4. Name, title, email and phone# for the person with executive authority.
5. Electronic codes of conduct statement (searchable documents preferred)

The letter should state something like this:

Please find attach our Code of Conduct statement in order to be in compliance with the:

Administrative, National, and Department Policy Requirements and Terms for HUD's Financial Assistance Programs as illustrated in the following documents:

Name the attachments.

Please feel free to contact: ED name, address and phone number if you have any questions.

Thank you.

Send the letter and the attachments to:

<mailto:askGMO@hud.gov>, keep a copy in the administrative files for your records.

