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With HOTMA Sections 102 and 104

To be implemented after the 50058 Vendor and HIP is ready.

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**Administrative Plan  
Westerly Housing Authority  
Westerly, RI**

**PURPOSE AND MISSION**

This Plan is established in order that the Westerly Housing Authority, Westerly, Rhode Island will meet its responsibilities pursuant to 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, with respect to admission and occupancy of the Housing Choice Voucher Program.

This Policy governs admission and occupancy of the Housing Choice Voucher administered by the Westerly Housing Authority, Westerly, Rhode Island hereafter called the WHA. It is the intent of the WHA to ensure decent, safe and sanitary housing for families of limited income in all Housing Choice Voucher units operated by the WHA under the United States Housing Act of 1937, as amended. It is the intent of the WHA to provide a suitable living environment which fosters economic and social diversity and upward mobility. The WHA will periodically review this Policy to assure 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 that we serve. Our agency conducts its business in an efficient, professional, and ethical manner without discrimination.

**B. Programs**

The Westerly Housing Authority (WHA) is a Housing Choice Voucher 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 was incorporated by the Town of Westerly and currently serves 162 units.

**C. Location/Office Hours**

Applications and intake interviews are processed centrally at the Westerly Housing Authority office located at 5 Chestnut Street, Westerly, RI 02891 or at designated location(s). The office hours are Monday through Friday 7:30am to 4:00pm. Applications will be accepted only at the time of the Housing Choice Voucher Wait List opening. All applications will be processed the day of the opening of the wait list and will be processed in the order we receive them.

## **CONDUCTING BUSINESS IN ACCORDANCE WITH CORE VALUES AND 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 Westerly Housing Authority, 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***

*In accordance with 24 CFR 982.161, neither the Westerly Housing Authority nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the tenant-based programs in which any of the following classes of persons has any interest, direct or indirect, during his or her tenure with the Westerly Housing Authority 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 Westerly Housing Authority'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.

The Conflict-of-Interest prohibition under this section may be waived by the HUD Field Office upon the request of the Westerly Housing Authority for good cause.

#### **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 value in excess of \$20.00

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 Westerly Housing Authority's Personnel Policy or as determined by action of the Board of Commissioners.

### **SUPPORT FOR OUR ARMED FORCES**

A major and important component of our armed forces are the part-time military personnel that serve in various Reserve and National Guard units. The Westerly Housing Authority is very supportive of these men and women. An unfortunate fact of service in both the Reserves and National Guard is that from time to time their personnel are activated to full-time status and asked to serve our country in a variety of ways and circumstances. Whenever the Federal Government activates Reserve and/or National Guard personnel, the Westerly Housing Authority wants to support these brave warriors in the following manners:

- A. If a family finds it necessary for another adult to temporarily move into a unit solely to serve as a temporary guardian for children residing in the unit, the income received by the temporary guardian will not be counted in determining family income. The presence of the temporary guardian will need to be approved by the landlord.
- B. Although typically a criminal background check is required before anyone can participate in the housing choice voucher program, this requirement will be waived for a temporary guardian. Instead, the background check will occur after the person moves into the assisted unit. If the results of the check dictate that the person is ineligible for the program, the family shall be given a reasonable time to find a temporary replacement guardian.
- C. Recognizing that activation in the Reserves or National Guard can be very disruptive to a family's income, the Westerly Housing Authority will expeditiously re-evaluate a resident's portion of the rent if requested to do so.
- D. A unit cannot be held by a family that is not residing in it as their primary residence for more than 180 consecutive calendar days because of a specific federal regulation. If all members of a military family are temporarily absent from the unit because a member of the family has been called to active duty, the family can retain control of the unit by paying the required rent and returning to the unit within 30 calendar days of the conclusion of the active-duty service. If the service extends beyond 180 calendar days, the Westerly Housing Authority will seek a waiver of the 180-calendar day limit from HUD.

## **ANTI-FRAUD POLICY**

The Westerly Housing Authority is fully committed to combating fraud in its Section 8 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 Westerly Housing Authority. It results in the inappropriate expenditure of public funds and/or a violation of Section 8 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 Westerly Housing Authority shall aggressively attempt to prevent all cases of fraud.

When a fraudulent action is discovered, the Westerly Housing Authority 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;
- C. Terminate the resident's rental assistance;
- D. Refer the case for criminal prosecution; or
- E. Take such other action as the Westerly Housing Authority deems appropriate.

## **RIGHT TO PRIVACY**

All adult members of both applicant and participant households are required to annually sign HUD Form 9886, *Authorization for Release of Information and Privacy Act Notice*. The *Authorization for Release of Information and Privacy Act Notice* states how family information will be released and includes the *Federal Privacy Act Statement*.

Any request for applicant or participant information will not be released unless there is a signed release of information request from the applicant or participant. This includes transmitting data to a Receiving Housing Authority under Portability.



#### **4. 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 accommodation 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 ensure 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;
- ii. 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 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 the 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.*

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

It is the policy of the Westerly Housing Authority 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 Westerly Housing Authority 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 of 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 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; 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, 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 pre-employment 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 detail 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.

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*[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 to 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 applied 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 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 (1)(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 (1)(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]*

## 7. Limited English Proficiency (LEP) Policy

### *General Language Access Policy*

#### *1. Policy Statement*

It is the policy of Westerly Housing Authority 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 if the preferred mode of communication for a Deaf or Hard of Hearing individual is interpretation or Communication Access Realtime Translation (CART).

## 7. Procedures for Language Services

1. **Designate a Language Access Coordinator:** Assign a coordinator within your organization to oversee language access services.
2. **Understand Legal Requirements:** Familiarize yourself with Title VI, Executive Order 13166, and your state language access laws.
3. **Assess LEP Needs:** Use the following four-factor analysis to determine the access needs of LEP individuals:
  - Number of LEP persons in the service area eligible to be served.
  - Frequency of contact with LEP persons.
  - Nature and importance of the service to LEP persons.
  - Resources available and overall costs.
4. **Identify Languages:** Determine which languages will be included in the access plan and how interpretation services will be provided to LEP individuals.
5. **Integrate Policies:** Incorporate language access policies and procedures into existing organizational policies.
6. **Use Interpretation Services:** For briefings, informal reviews, or hearings, utilize interpretation services such as Google Language.
  - **Rhode Island Department of Health (RIDOH):** Provides training, resources, and support for implementing the National Standards for Culturally and Linguistically Appropriate Services (CLAS). These standards ensure that LEP individuals receive effective, equitable, and high-quality care.
  - **Rhode Island Judiciary:** Has a Language Access Plan to provide services to LEP individuals in accordance with state and federal guidelines. This includes providing qualified interpreters and multilingual notices.
  - **Rhode Island Legal Services:** Offers free legal assistance to low-income individuals, including help with accessing benefits and services for LEP individuals.

7. **Interpreter Choice:** LEP individuals may choose to use an interpreter of their own selection, at their own expense, instead of the services provided by WHA. WHA reserves the right to use its language services even if the LEP individual opts for their own interpreter. The chosen interpreter can be a family member or friend, provided they are over 18 years old.
8. **Written Translation Obligations:** Provide written vital documentation for each LEP language group. If there are fewer than five persons in a language group, WHA will not translate vital written materials but will provide written notice in the primary language of the LEP group of the right to receive oral interpretation of those materials, free of charge.
9. **Alternative Communication Methods:** If WHA serves very few LEP persons and has limited resources, it will not create a written LEP plan but will explore other reasonable methods to communicate effectively.
10. **Communication Support for the Deaf:** WHA may reach out to the following agencies to assist individuals who are deaf:
  - **Rhode Island Commission on the Deaf and Hard of Hearing (RICDHH):** Provides advocacy, coordination, and direct services, including a Sign Language Interpreter/CART Referral Service and a clearinghouse of information on hearing loss.
  - **Providence Housing Authority:** Offers disability rights and services, ensuring equal opportunities for individuals with disabilities, including those who are deaf.
  - **Rhode Island Disability Law Center:** Provides legal representation and advocacy for individuals with disabilities, including those who are deaf.

#### **4. 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.*

#### **5. 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 the **Executive Director** 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 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 **Housing Choice Voucher Coordinator'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. **Staff Compliance***

##### **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 organization's 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 of 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"/> <p>أنا هنا في القاهرة مع عائلتي وأزواجنا من جميع أنحاء مصر. أهلاً بكم.</p>                     | 1. Arabic              |
| <input type="checkbox"/> <p>Խոսողո՞ւմ ե՞նք՝ նշո՞ւմ կատարե՞լ այս բանակատու՞մ, եթե խոսո՞ւմ կա՞մ կարգո՞ւմ ե՞ք հայերեն:</p> | 2. Armenian            |
| <input type="checkbox"/> <p>যদি আপনি বাংলা পড়েন বা বলেন তা হলে এই বাক্সে দাগ দিন।</p>                                  | 3. Bengali             |
| <input type="checkbox"/> <p>ប្រសិនបើ អ្នក អាច អាន ឬ ទស្សនា ភាសាខ្មែរ បាន ទេ ក្នុង ក្របខណ្ឌ នេះ ។</p>                    | 4. Cambodian           |
| <input type="checkbox"/> <p>Motka i kakhon ya yangin ûntûngnu' manaitai pat ûntûngnu' kumentos Chamorro.</p>            | 5. Chamorro            |
| <input type="checkbox"/> <p>如果你能读中文或讲中文，请选择此框。</p>  | 6. Simplified Chinese  |
| <input type="checkbox"/> <p>如果你能讀中文或講中文，請選擇此框。</p>  | 7. Traditional Chinese |
| <input type="checkbox"/> <p>Označite ovaj kvadratić ako čitate ili govorite hrvatski jezik.</p>                         | 8. Croatian            |
| <input type="checkbox"/> <p>Zaškrtněte tuto kolonku, pokud čtete a hovoříte česky.</p>                                  | 9. Czech               |
| <input type="checkbox"/> <p>Kruis dit vakje aan als u Nederlands kunt lezen of spreken.</p>                             | 10. Dutch              |
| <input type="checkbox"/> <p>Mark this box if you read or speak English.</p>   | 11. English            |
| <input type="checkbox"/> <p>اگر خواندن و نوشتن فارسی بلد هستید، این مربع را علامت بنید.</p>                             | 12. Farsi              |

- |                          |  |                    |
|--------------------------|--|--------------------|
| <input type="checkbox"/> | Cocher ici si vous lisez ou parlez le français.                                      | 13. French         |
| <input type="checkbox"/> | Kreuzen Sie dieses Kästchen an, wenn Sie Deutsch lesen oder sprechen.                | 14. German         |
| <input type="checkbox"/> | Σημειώστε αυτό το πλαίσιο αν διαβάσετε ή μιλάτε Ελληνικά.                            | 15. Greek          |
| <input type="checkbox"/> | Make kazyè sa a si ou li oswa ou pale kreyòl ayisyen.                                | 16. Haitian Creole |
| <input type="checkbox"/> | अगर आप हिन्दी बोलते या पढ़ सकते हैं तो इस बक्स पर चिह्न लगाएँ।                       | 17. Hindi          |
| <input type="checkbox"/> | Kos lub voj no yog koj paub twm thiab hais lus Hmoob.                                | 18. Hmong          |
| <input type="checkbox"/> | Jelölje meg ezt a kockát, ha megérti vagy beszél a magyar nyelvet.                   | 19. Hungarian      |
| <input type="checkbox"/> | Markaam daytoy nga kahon no makabasa wenno makasaoka iti Ilocano.                    | 20. Ilocano        |
| <input type="checkbox"/> | Marchi questa casella se legge o parla italiano.                                     | 21. Italian        |
| <input type="checkbox"/> | 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       |
| <input type="checkbox"/> | 한국어를 읽거나 말할 수 있으면 이 칸에 표시하십시오.   | 23. Korean         |
| <input type="checkbox"/> | ໃຫ້ທ່ານໄລ່ຂອງນີ້ ຖ້າທ່ານອາດມີພາສາລາວ.  | 24. Laotian        |
| <input type="checkbox"/> | 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 квадратич укoликo 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
- ၂၆ နံပါတ်ရှိ နံပါတ်များကို ဖတ်ပါက သို့မဟုတ် ပြောဆိုပါက ဤကွက်ကို မှတ်တမ်းတင်ပါ။ 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. Ukranian
- اگر آپ اردو پڑھتے یا بولتے ہیں تو اس خانے میں نشان لگائیں۔ 36. Urdu
- Xin ñiành daáu vaø oâ naøy neáu quyù vò bieát ñoic vaø noui ñoôic Vieät Ngõõ. 37. Vietnamese
- اگر خواندن و نوشتن فارسی بلد هستید، این مربع را علامت بزنید. 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 the Westerly Housing Authority office located at 5 Chestnut Street, Westerly, RI 02891 or at a designated location. The office is open Monday through Friday from 7:30am to 4:00pm. Applications will be accepted only at the time of Housing Choice Voucher Wait List opening. All applications will be processed on the day of the opening of the wait list and will be processed in the order for which it was received.
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 consist 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 (HUD 9886A)
  - 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)  
Debts Owed EIV, HUD-52675

o. HUD 9886A Authorization for the Release of Information.

6. 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.

7. 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.

8. 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).

9. 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.

10. HUD 9886A form. After January 1, 2024, an applicant or participant has signed a HUD 9886A form they do not need to sign and submit subsequent consent forms at the next interim or regularly schedule income examination except under the following circumstances:

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

If a family revokes or refuses to sign the consent form the PHA is prohibited from requesting and receiving income information and financial records including pulling EIV and using EIV to verify income and the family will not be processed. If revocation occurs the PHA must notify the field office and the family's assistance will be denied or the family will be terminated.

If the family leaves the program then the HUD 9886A form is considered to be terminated and no longer in effect. The HUD 9886A will remain effective until the family is denied assistance, the assistance is terminated or if the family provides written notification to the PHA to revoke consent. PIH 2023-27.

*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 the 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. FAMILY/OWNER OUTREACH**

The WHA will publicize the availability and nature of the Section 8 Program for extremely low-income and very low families in a newspaper of general circulation, minority media, and by other suitable means.

To reach persons who cannot or do not read newspapers the WHA will distribute fact sheets to the broadcasting media and initiate personal contacts with members of the news media and community service personnel. The WHA will also try to utilize public service announcements.

The WHA will communicate the status of program availability to other service providers in the community and advise them of housing eligibility factors and guidelines so that they can make proper referral of their clients to the program.

The objective of this effort is to develop a waiting list that is representative of our low-income community. A particular emphasis will be placed on attracting eligible individuals and families least likely to apply for the Housing Choice Voucher Program.

The WHA will hold briefings for owners who participate in or who are seeking information about the Section 8 Program. The briefings are intended to:

- A. Explain how the program works;
- B. Explain how the program benefits owners;
- C. Explain owners' responsibilities (including lead-based paint) under the program. Emphasis is placed on quality screening and ways the WHA helps owners do better screening; and
- D. Provide an opportunity for owners to ask questions, obtain written materials, and meet WHA staff.

The WHA will particularly encourage owners of suitable units located outside of low-income or minority concentration and owners of accessible units to attend. Targeted mailing lists will be developed, and announcements mailed.

## 1. 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:

### I. Is a family as defined in this Policy; (24 CFR 5.403)

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:

(i) An elderly person, displaced person, disabled person, near-elderly person, or any other single person;

(ii) 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, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; or

#### (2) A group of persons residing together, and such group includes, but is not limited to:

(i) 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);

(ii) An elderly family;

(iii) A near-elderly family;

(iv) A disabled family;

(v) A displaced family; and

(vi) The remaining member of a tenant family.

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

(1) Is determined to be essential to the care and well-being of the persons;

(2) Is not obligated for the support of the persons; and

(3) Would not be living in the unit except to provide the necessary supportive services.

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

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>

<p><i>Evicted from federally assisted housing for drug-related criminal activity within the last three years, UNLESS</i></p> <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>	<p><i>Mandatory 3-year denial on admission, except if specified conditions are met then PHA may exercise discretion</i></p>
<p><i>History of drug-related criminal activity</i></p>	<p><i>Discretionary denial</i></p>
<p><i>History of violent criminal activity</i></p>	<p><i>Discretionary denial</i></p>
<p><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></p>	<p><i>Discretionary denial</i></p>

(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.*

## 2. DETERMINATION OF FAMILY INCOME

To determine annual income, the WHA 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 WHA 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):

(A) Distributions of the principal or corpus of the trust; and

(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 18 years of age.

### **3. 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 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 \$51,600 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 of 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.*

(i) *This is 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.*

(ii) *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.*

(i) *Families are required to provide a Social Security Number for all family members prior to admission.*

(ii) *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.*

(iii) *. 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*
  - c. *in case of existing resident, the criteria and procedures for obtaining relief under the provisions for preservation of families.*
  - d. *that family has right to appeal the Dept. of Homeland Security results and submit additional documentation supporting the appeal*
  - e. *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.*
  - f. *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)**

<b>Report Title</b>	<b>Report Description</b>	<b>Frequency of Use</b>	<b>PHAs/MFH Owners</b>
<b>Debts Owed to PHAs &amp; Terminations</b>	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.
<b>Deceased Tenants Report</b>	Identifies tenants reported by Social Security Administration (SSA) as being deceased.	At least quarterly	PHAs/MFH Owners
<b>Existing Tenant Search</b>	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
<b>Failed EIV Prescreening Report</b>	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
<b>Failed Verification Report (Failed SSA Identity Test)</b>	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.		
<b>Identity Verification Report</b>	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 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
6	Upfront Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system	Highest PHAS must pull the EIV Income Report for each family at every Annual Reexamination. EIV may be used as the sole verification of Social Security income. EIV income information may be used to calculate other types of annual income when family agrees. See Level 4 for more information.
5	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.*



### **3. 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 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 \$51,600 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 of 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 (i) 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.*

(i) *This is 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.*

(ii) *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.*

(i) *Families are required to provide a Social Security Number for all family members prior to admission.*

(ii) *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.*

(iii) *. 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*
  - c. *in case of existing resident, the criteria and procedures for obtaining relief under the provisions for preservation of families.*
  - d. *that family has right to appeal the Dept. of Homeland Security results and submit additional documentation supporting the appeal*
  - e. *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.*
  - f. *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)**

<b>Report Title</b>	<b>Report Description</b>	<b>Frequency of Use</b>	<b>PHAs/MFH Owners</b>
<b>Debts Owed to PHAs &amp; Terminations</b>	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.
<b>Deceased Tenants Report</b>	Identifies tenants reported by Social Security Administration (SSA) as being deceased.	At least quarterly	PHAs/MFH Owners
<b>Existing Tenant Search</b>	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
<b>Failed EIV Prescreening Report</b>	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
<b>Failed Verification Report (Failed SSA Identity Test)</b>	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.		
<b>Identity Verification Report</b>	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 PHAS 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 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
6	Upfront Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system	Highest PHAS must pull the EIV Income Report for each family at every Annual Reexamination. EIV may be used as the sole verification of Social Security income. EIV income information may be used to calculate other types of annual income when family agrees. See Level 4 for more information.
5	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 PHA's 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.*

#### **4. ASSETS (PIH notice 2023-27 rev 1)**

- **Net family assets that exceed \$103,200, as adjusted annually for inflation.** HUD will adjust this amount annually in accordance with the Consumer Price Index–Urban Wage Earners and Clerical Workers (CPI–W). A PHA may accept a declaration from the family that their net assets do not exceed \$51,600 (as adjusted for inflation), without needing to further verify that declaration. See Self-Certification of Net Family Assets Equal to or Less Than \$51,600 (as adjusted by inflation) at the end of this chapter. For assets disposed of for less than fair market value during the two years preceding the date of application for the program or reexamination, as applicable, the difference in value between the consideration received and the fair market value must be included in net family assets.
- **Real property that is suitable for occupancy.** Real property means “real property as provided under the State law in which the property is located.” Families are out of compliance if they have a present ownership interest in, a legal right to reside in, and the effective legal authority to sell a property (based on laws of the state or locality in which the property is located) that is suitable for occupancy by the family as a residence. However, there are several exemptions to the real property restriction, discussed below in Exemptions to the Real Property Restriction in the Asset Limitation.
- In determining whether the family owns real property that would make them out of compliance, a PHA may rely upon a self- certification, both at the time of admission and at reexamination, from the family stating that they do not have any present ownership interest in any real property. A PHA could use a form that requests certification of the family’s present ownership interest in the property, and also inquire about the family’s legal right to reside in, and the effective legal authority to sell any real property that is suitable for occupancy by the family. If the family certifies that they do not have any present ownership interest in real property, the PHA may take that as sufficient to determine the family is not out of compliance with the real property restriction. However, if the family owns real property, the PHA must seek third- party verification of the family’s legal right to reside in the property, the effective legal authority to sell the property, and whether the property is suitable for occupancy by the family as a residence.

**Note:** Ownership of real property is relevant to the asset limitation in two distinct ways: 1) if the family has an ownership interest in real property, that interest may cause the family’s net family assets to exceed \$103,200 (adjusted for inflation), in which case the family is out of compliance; and 2) if the family has a present ownership interest in, a legal right to reside in, and the effective legal authority to sell a property that is suitable for occupancy by the family as a residence, then the family is out of compliance. There are several exemptions to the real property restriction at § 5.618(a)(1)(ii), which identify when a real property ownership interest does not by itself render the family out of compliance with the asset limitation. However, those exemptions do not indicate that such real property is excluded from the calculation of net family assets. Unless the real property is specifically excluded from net family assets in the definition under § 5.603, it may be included in net family assets. If the value of that real property brings the net family assets above \$103,200 (as adjusted for inflation), the family will be out of compliance.

### **Compliance at Admission**

**At admission, ownership of net family assets that exceed \$103,200 (as adjusted) or ownership of disqualifying real property require denial of assistance. PHAs do not have the discretion to not enforce or provide limited enforcement of the asset limitation at admission.**

### **PHA Discretion at Annual and Interim Reexamination**

PHAs have discretion with respect to the application of the asset limitation at annual and interim reexamination. PHAs may adopt a written policy of total non-enforcement, enforcement, or limited enforcement, as described below. They may also adopt exception policies as described in A.3.d.

Regardless of the policy they adopt, PHAs must comply with federal fair housing and civil rights requirements, including reasonable accommodation requirements. This obligation applies regardless of whether PHAs establish enforcement, limited enforcement, or exception policies to the asset limitation at reexamination. This may mean, for example, that a PHA would be required to allow someone to cure their noncompliance or provide more time to demonstrate they have cured their noncompliance before terminating assistance if there was a nexus between the person's disability and their need to cure or their need for additional time to demonstrate they have cured their noncompliance. A reasonable accommodation could require delaying the initiation of termination or eviction proceedings for more than six months.

#### **A.1.a Total Non-Enforcement**

At annual and interim reexamination, PHAs may choose not to enforce the asset limitation, if they establish a written non-enforcement policy. PHAs may establish a total non-enforcement policy for all families at reexaminations, which would mean that they will not initiate termination or eviction proceedings for a family for non-compliance with the asset limitation. Where the PHA exercises this discretion to allow families who would otherwise fail to comply with the asset limitation to continue renting their units, the families will continue to receive assistance. If they adopt a total non-enforcement policy, PHAs must apply the non-enforcement policy the same for all families within a program (e.g., if adopted in a PHA's Admissions and Continued Occupancy Policy, it must apply to all Public Housing families). Any non-enforcement policy must be included in the PHA's Administrative Plan or ACOP.

**Note:** PHAs who adopt a total non-enforcement policy are still required to calculate net family assets in the manner required by § 5.603, as part of the process of calculating annual income in accordance with § 5.609. In the course of calculating net family assets, PHAs thus still need to determine whether the family owns real property that must be included in net family assets. However, if they adopt a total non-enforcement policy, they are not required to obtain and verify additional information about owned real property strictly to determine whether it qualifies for an exemption under § 5.618 (e.g., whether owned real property is suitable for occupancy). For example, if a PHA finds a family owns real property, that real property would need to be included in the calculation of net family assets unless it is specifically excluded by § 5.603, but the PHA would not need to inquire whether it was suitable for occupancy.

#### **A.1.b Enforcement**

PHAs may choose to enforce the asset limitation at reexamination. PHAs with an enforcement

policy at reexamination must initiate termination or eviction proceedings within six months of the income examination that determined the family was out of compliance. They may delay the initiation of termination or eviction proceedings for noncompliant families for up to but no longer than six months.

Any enforcement policy, including the amount of time that a PHA will delay the initiation of termination or eviction proceedings for noncompliant families, must be included in the PHA's Administrative Plan or PHA ACOP.

#### **A.1.c Limited Enforcement: Option to Cure**

PHAs may alternatively adopt a written policy of limited enforcement, which would differ from total enforcement of the asset limitation at reexamination in only one regard: all families who are found to be out of compliance at reexamination would be provided the same opportunity to come back into compliance. Families would have up to but no longer than six months, depending on the limited enforcement policy that the PHA adopts, to demonstrate that they have come back into compliance. If the family does demonstrate they have come back into compliance within that period, the PHA would not initiate termination or eviction proceedings.

Limited enforcement policies cannot provide families more than six months to come back into compliance and do not extend the period of time the PHA may delay initiation of termination or eviction proceedings; the PHA may still only delay initiation of termination or eviction proceedings for the family for a period of not more than six months. (In the case of a reasonable accommodation, a family may be afforded more than six months to comply.) See paragraph A.4 on the features that determine whether owned real property renders the family out of compliance with the asset limitation.

If the PHA has adopted a limited enforcement policy, that policy must address the timeframe for curing non-compliance (e.g., families will have six months to demonstrate they have cured non-compliance with the asset limitation). In establishing a limited enforcement policy, PHAs may choose to allow an opportunity to cure non-compliance that is less than six months. Any limited enforcement policy, including the amount of time that a PHA will delay the initiation of termination or eviction proceedings for families who do not demonstrate compliance, must be included in the PHA's Administrative Plan or PHA ACOP.

What families must do to cure non-compliance depends on why they were identified as out of compliance. Families could cure non-compliance by removing prohibited assets — for example, by selling real property or bringing net family assets below \$103,200 (as adjusted for inflation). However, the value of assets disposed of for less than fair market value would still be counted in the family's net family asset total in the two years preceding the date of application for the program or reexamination.

If the family is non-compliant with the asset limitation because of a present ownership interest in real property, but their net family assets do not exceed \$103,200 (adjusted for inflation), they can cure non-compliance by demonstrating that either they no longer own the prohibited asset or that it now qualifies for an exemption (e.g., because the family is now offering it for sale), so long as the family's net family assets do not exceed \$103,200 (adjusted for inflation) after such action is taken. (Note, however, that offering real property for sale does not thereby exclude the real property from the calculation of net family assets.)

A family with more than \$103,200 (as adjusted annually for inflation) in net family assets may

bring their assets below the threshold in several ways. The family could purchase something that is not counted among net family assets, such as necessary personal property (e.g., a car used for everyday transportation). Alternatively, the family may cure non-compliance by moving assets such that they are no longer counted among net family assets, so long as doing so is not counted as disposing of assets for less than fair market value. In some circumstances, the family may transfer funds into a retirement plan recognized as such by the Internal Revenue Service (e.g., an individual retirement arrangement, employer retirement plan, or retirement plan for self-employed individuals), if the account is held by a member of the family. An asset moved to a retirement account held by a member of the family is not considered an asset disposed of for less than fair market value. Likewise, the family may be able to move funds into an irrevocable trust for the benefit of someone in the assisted family.

When PHAs have a limited enforcement policy and the family demonstrates they have cured non-compliance, PHAs must record the curing of a family's ineligibility in the family's file and permit families to remain in the program. The related updates to the family's income and assets would be processed at the next reexamination, which may be an interim if the family's circumstances meet the threshold for processing such a reexamination, or it may be the next annual reexamination.

**A.1.d Exception Policies** At annual and interim reexamination, PHAs may also establish exceptions to the asset limitation (not at admission or initial certification where the family is being rescreened for assistance). If the PHA has adopted a written exception policy for reexaminations, then families in the specified exception categories will receive either total non-enforcement or limited enforcement, depending on the exception policy the PHA has adopted. Families in the specified exception categories would either (a) not be subject to termination or eviction proceedings due to non-compliance with the asset limitation at a reexamination, or (b) they would be provided an opportunity, up to but no longer than six months, to come back into compliance, after which point the asset limitation would be enforced. An exception policy may be combined with a limited enforcement policy for all other families not in the exception categories, as described below. PHAs are permitted to include more than one exception as part of any exception policy. Exception policies may be based on family type and may take into consideration such factors as age, disability, income, the ability of the family to find suitable alternative housing, and whether supportive services are being provided. All exception policies must comply with civil rights and fair housing statutes and requirements, including but not limited to requirements identified in 24 CFR § 5.105(a). Limited exception policies, which establish an opportunity to cure non-compliance, cannot provide families more than six months to cure these conditions. (In the case of reasonable accommodation, a family may be afforded more than six months to comply.) If they have adopted such a policy, PHAs must initiate termination or eviction proceedings for families who remain in non-compliance with the asset limitation within six months of the reexamination at which the non-compliance was determined. In establishing a limited exception policy, PHAs may choose a period of delay that is less than six months. PHAs may choose to combine a limited enforcement policy (which applies to all families) with an exception policy for families in the

specified exception categories. For example, they may adopt a limited enforcement policy that provides all families a window of six months to cure non-compliance with the asset limitation, and they may simultaneously adopt an exception policy that provides that the asset limitation will not be enforced at all at annual and interim reexaminations for families in the exception categories. PHAs could alternatively adopt a limited enforcement policy for all families that provides a window of less than six months to cure non-compliance, alongside a limited exception policy that allows families in the exception categories a longer period of time (up to but no longer than six months) to cure non-compliance.

Any exception policy must be included in the PHA's Administrative Plan or PHA ACOP. The exception policy must describe whether excepted families are subject to total non-enforcement or limited enforcement.

#### **Example A1: Asset Limitation Exception Policies**

**Sample Policy A:** For all families that meet the definition of extremely low income at reexamination and are found to be non-compliant with the asset limitation, the PHA will not enforce the asset limitation at reexamination. Such families will not be subject to termination or eviction proceedings due to non-compliance with the asset limitation at reexamination. All other families will be subject to a limited enforcement policy and provided six months to cure noncompliance.

**Sample Policy B:** For all families that meet the definition of extremely low income at reexamination and are found to be non-compliant with the asset limitation, the PHA will not enforce the asset limitation at reexamination. Such families will not be subject to termination or eviction proceedings due to non-compliance with the asset limitation at reexamination. All other families will be subject to the enforcement policy.

**Sample Policy C:** Families with an elderly family member or a member with a disability will be given six months to cure their non-compliance with the asset limitation, as stated in the PHA's policies. All other families will be subject to a limited enforcement policy and provided four months to cure noncompliance.

**Sample Policy D:** Families with an elderly family member or a member with a disability will be given six months to cure their non-compliance with the asset limitation, as stated in the PHA's

## **A.2 Real Property Determination**

At admission and at reexamination, if the PHA is enforcing the asset limitation, including limited enforcement, and a family declares that they have a present ownership interest in real property, then the PHA must determine whether the property qualifies for an exemption as described in paragraph A.4.a (Exemptions to the Real Property Restriction in the Asset Limitation), whether the family lacks a legal right to reside in the real property as described in paragraph A.4.b (Legal Right to Reside in the Real Property), whether they lack the effective legal authority to sell the real property as described in paragraph A.4.c (Effective Legal Authority to Sell the Real Property), or whether the real property is unsuitable for occupancy as described in paragraph A.4.d (Suitability of Real Property for Occupancy). If the PHA finds that any of these four things are true, then the family's present ownership interest in real property does not itself mean the family is out of compliance with the asset limitation. The type of third-party documentation that will be used to verify the disposition of a family's real

property may vary by a family's circumstances and the locality in which the real property is located.

#### **A.2.a Exemptions to the Real Property Restriction in the Asset Limitation**

The real property restriction does not apply to the following:

- Any property for which the family is receiving assistance under 24 CFR § 982.620 (i.e., a manufactured home owned by a family who receives assistance to lease the space or lot in which it is located). Likewise, any property for which the family is receiving assistance under the Homeownership Option in 24 CFR Part 982. See 24 CFR § 5.618(a)(1)(ii)(A).
- Any property jointly owned by a family member and another individual who does not live with the family but who resides at the jointly owned property. See 24 CFR § 5.618(a)(1)(ii)(B).
- Any property owned by a family that includes a person who is a victim of domestic violence, dating violence, sexual assault, or stalking, as those terms are defined in 24 CFR Part 5 (Subpart L). For example, if the victim is a minor, the real property limitation does not apply to any property owned by the victim's parent or guardian. When a family requests an exemption from the real property limitation on this basis, the PHA must accept self-certification and follow the confidentiality, and documentation-request requirements established at 24 CFR § 5.2007. See 24 CFR § 5.618(a)(1)(ii)(C).
- Any property that the family is offering for sale. Documentary evidence of the sales process could include, for example, a contract with a real estate agent or a current real estate listing. See 24 CFR § 5.618(a)(1)(ii)(D).

#### **A.2.b Legal Right to Reside in the Real Property**

The real property restriction applies only when the family has the legal right to reside in the real property. Whether a family has the legal right to reside in a property may be dependent on state and local law. The family may own real property that legally they may not reside in. For example, the family may own a commercial property, such as a convenience store or other retail establishment, which cannot be occupied as a place of residence by the family. Families who claim they lack the legal right to reside in the real property must provide evidence to support their claim(s). What constitutes sufficient evidence will vary by circumstance.

#### **A.2.c Effective Legal Authority to Sell the Real Property**

The real property restriction applies only when the family has the effective legal authority to sell the real property, based on the laws of the state or locality in which the property is located. There may be multiple reasons why a family does not have such legal authority. For example, when families are contesting ownership of a property in court, or an individual is in divorce proceedings, they may be unable to sell the property until the completion of those proceedings. Someone who owns heirs' property may not have the authority to sell until others' claims to fractional ownership have been settled. Families who claim they lack the legal authority to sell the real property must provide evidence to support their claim(s). What constitutes sufficient evidence will vary by circumstance. For example, a divorce pleading or complaint may

demonstrate that there are actual divorce proceedings occurring.

#### **A.2.d Suitability of Real Property for Occupancy**

A property will be considered suitable for occupancy unless the family demonstrates that the real property meets one of the following five conditions (24 CFR § 5.618(a)(2)):

- The property is not capable of meeting the disability-related needs of all members of the family (e.g., does not meet physical accessibility requirements, family has disability-related need for additional bedrooms, family needs proximity to accessible transportation). Documentary requirements to establish disability-related needs must comply with applicable fair housing and civil rights requirements.
- The property is not sufficient for the size of the family. A PHA's occupancy standards may be used for such a determination.
- The property is geographically located so that it creates 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 place a hardship on the family, as determined by the PHA. Distance or commute time to school/work are illustrative, but not exhaustive, examples of geographic hardships). Through written policies, PHAs may set parameters on what constitutes such a hardship, but they must consider the specific circumstances of the family, including information provided by the family, in making a determination.
- The property is not safe to reside in because of its physical condition (e.g., the property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied). Unsafe property conditions could include external circumstances or environmental factors outside the control of the family. The property may be deemed not suitable for occupancy if the alterations that would be needed to make it safe to live in are cost prohibitive.
- The family does not have the legal right to reside in the property.

#### **A.3 Special Considerations for Terminating Assistance or Evicting Families for Non- Compliance with the Asset Limitation**

Even if PHAs do not adopt a non-enforcement or limited enforcement policy and/or exception policy, they may delay for a period of up to six months the initiation of termination or eviction of assistance proceedings. They are not required to initiate termination or eviction of assistance proceedings immediately upon determining the family is out of compliance with the asset limitation, nor are they required to begin the proceedings during the six-month period in order to have a termination of assistance or eviction completed at the six-month mark. PHAs are encouraged to set policies for the initiation of termination or eviction of assistance proceedings that provide families adequate opportunity to find new housing.

What it means to initiate termination or eviction of assistance proceedings due to non-compliance with the asset limitation will vary by program:

- In the Section 8 Project-Based Rental Assistance program, including the



Section 202/8 program, participants who are not compliant with the asset limitation must either pay the contract rent for the unit or vacate the unit after termination of assistance.

- In the Housing Choice Voucher program, participants who are not compliant with the asset limitation are subject to termination of assistance, but there is no requirement that the unit owner initiate eviction because of non-compliance with the asset limitation.
- In the Public Housing program, participants who are not compliant with the asset limitation are subject to termination of assistance and eviction from the unit, if they fail to vacate the unit voluntarily. There is no general provision that allows such families to remain and pay an alternative rent.
- In the Section 8 Project-Based Voucher program, participants who are not compliant with the asset limitation are subject to termination of assistance. The PHA and owner may agree to remove the unit from the HAP contract, at which point the unit becomes an unassisted unit, and the owner may choose to allow the family to stay and pay the market rent. (The owner may charge the family a rent that is below-market rate, in which case it would be considered a landlord-assisted unit for rent reasonableness purposes.) When the family subsequently vacates the unit, the unit may be added back to the HAP contract. If the project is partially assisted, the PHA and owner may substitute a different unit for the unit removed due to the ineligibility of the tenant, consistent with the requirements for adding units to the HAP contract. Alternatively, if the owner refuses to agree to remove the unit from the HAP contract, the owner must evict the family, if they fail to vacate the unit voluntarily. In this case, the owner may not enter into a new lease with the now-ineligible family for that PBV-assisted unit, and the PBV unit must be leased to an eligible family.
- In the Section 8 Moderate Rehabilitation program, participants who are not compliant with the asset limitation are no longer eligible for assistance. 24 CFR § 882.512 expressly allows that families who were eligible at admission but subsequently become ineligible may remain in HAP contract units. However, if the owner fails to have at least 90 percent of the assisted units leased or available for leasing by eligible families, the PHA may reduce the number of units covered by the HAP contract. The PHA will agree to an amendment of the HAP contract to provide for subsequent restoration of any reduction in units if the PHA determines that the restoration is justified by demand, the owner otherwise has a record of compliance with obligations under the HAP contract, and contract authority is available.

PHAs must follow program procedures for terminating assistance or tenancy. For example, for Public Housing families, when the PHA initiates the eviction and termination process, the PHA must provide a lease termination notice of 30 days unless a state or local law requires a longer notice period, and the family must be provided an opportunity for a hearing under the PHA administrative grievance procedure.

#### **A.4 Required Policy Updates to Administrative Plans, ACOPs, and Tenant**

## **Selection Plans**

### **A.4.a Admission Policies**

PHAs must establish written screening criteria in their Administrative Plans, ACOPs, or Tenant Selection Plans, as applicable, to prohibit the admission of applicants who own net family assets that exceed \$103,200 (as adjusted for inflation) and/or real property that is suitable for occupancy. Policies should indicate the general parameters PHAs will use when determining whether the location of real property constitutes a geographic hardship.

### **A.4.b Reexamination Policies**

Whether a PHA chooses to adopt a total non-enforcement, enforcement, limited enforcement, and/or exception policy for reexaminations, that policy and accompanying details must be set forth in the PHA's ACOP or Administrative Plan or in a MFH Owner's Tenant Selection Plan, as applicable.

PHAs must also update their Administrative Plans, ACOPs, or Tenant Selection Plans, as applicable, to indicate when they will initiate termination or eviction proceedings after participant families are determined to be out of compliance with the asset limitation, when the PHA has established either an enforcement policy or policies to permit families to cure their noncompliance. PHAs must initiate termination or eviction proceedings for families who remain out of compliance with the asset limitation within six months of the reexamination at which the non-compliance was determined. Policies should indicate the general parameters PHAs will use when determining whether the location of real property constitutes a geographic hardship.

*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 \$51,600 (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 \$51,600 (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 \$51,600.

When the family's net family assets do not exceed \$51,600 (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** (<https://www.huduser.gov/portal/datasets/inflationary-adjustments-notifications.html>)

For 2024, the passbook rate will be 0.45 percent.

**NET FAMILY ASSET SELF-CERTIFICATION FORM**

**Self-Certification of Net Family Assets and Real Property**

This form will help determine your eligibility for the program under the asset limitation. Your housing provider may also use this form to help determine your income from assets if your total net family assets do not exceed \$50,000 (adjusted annually for inflation). Third-party verification is required when net family assets exceed \$50,000, and every three years.

**Real Property** (for example: land, house, condominium, commercial building, etc.).

1. Do you or any member of your assisted family have an ownership interest in any real property?

Yes  No

If the answer to question #1 is No, skip to question #6.

2. If yes, please check off if any of the following statements are true about the property:

The property does not meet the disability-related needs for all members of the family (for example, physical accessibility requirements, accessible common areas, disability-related need for additional bedrooms, or closeness to accessible transportation/medical facilities/other supportive services, etc.);

The property is not sufficient for the size of the family;

The property is located in an area that is a hardship (for instance, far from a family member's place of work or school);

The property is not safe to live in because of physical condition; or

The property is not a property where a family can live based on the State or local laws where the property is located.

If you checked off any of the above statements, you will need to provide additional documentation to demonstrate that the statement is true.

3. If you did not check off any of the statements in question 2, do you or any member of your assisted family have the legal authority to sell the property?

Yes  No

4. There is an exemption from the limitation on assistance for families that have an ownership interest in real property for victims of domestic violence, dating violence, sexual assault, and stalking. If you or any member of the assisted family is a victim, you can claim

*this exemption from the real property limitation. Please check this box if you think you may be eligible for this exemption.*

- I believe I may be eligible for this exemption, and I would like more information from the PHA's VAWA Coordinator or Executive Director, or the MFH property's Owner/Agent. (If you do not understand this exemption or how to exercise your rights, you can speak to these individuals for more information.)*

5. *What is the estimated cash value of the property (market value minus mortgage/other loans and costs to sell. Enter \$0 if market value of property is less than outstanding debt (i.e., mortgage is upside down/underwater)?*

\$

**Other Assets** (for example: accounts, luxury items that are not necessary)

6. *How much income do you expect your family to earn from your total family assets in the next year? This includes interest, dividends, and other earnings, e.g., anything for which you receive Form 1099 tax documents. Actual income (interest, dividends, etc.) from excluded assets is included as income.*

\$

7. *Do you or any member of your assisted family have other assets (including checking accounts, savings accounts, certificates of deposits (CDs), stocks, bonds, luxury items, recreational vehicles, etc.) that total more than \$50,000 (adjusted annually for inflation)?*

- Yes  No

<u>Assets to consider</u>	<u>Assets always excluded</u>
<ul style="list-style-type: none"> <li>• <i>Checking and savings accounts</i></li> <li>• <i>Stocks, bonds, mutual funds</i></li> <li>• <i>Luxury items or items that are not necessary, e.g., recreational boat, vehicles not used for regular transportation</i></li> <li>• <i>Assets disposed of for less than fair market value; for example, if you gave away a house to someone out outside of the assisted family within the past two years, the value of the house would be considered an asset (except as determined by certain divorce or separation settlements)</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Retirement accounts (e.g., IRAs, 401k, 403b)</i></li> <li>• <i>Educational savings accounts (Section 529, Section 530, Coverdell ESA, etc.)</i></li> <li>• <i>ABLE accounts</i></li> <li>• <i>Non-revocable trusts</i></li> <li>• <i>Necessary items of personal property (items essential for the maintenance, use, and occupancy of a home or necessary for employment, education, cultural expression, or health and wellness)</i></li> <li>• <i>Federal tax refunds (must be subtracted from total net family assets)</i></li> </ul>

*I/We, the undersigned, certify that the information provided here is true and correct to the best of my knowledge and recollection. 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)*

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## **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 meetings 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.*

*Internet Explorer will not work on the new HIP systems, so the PHAs must use Microsoft Edge, Safari, or Firefox to access HIP.*

*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.

The PHA must use the following reports:

Report Title	Report Description	Frequency of Use	PHAs/MFH Owners
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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)	Identifies tenants whose personal identifiers (last name, date of birth, SSN) do not match the SSA database.	Monthly	PHAs/MFH Owners
Failed Verification Report (Failed)	Identifies tenants whose personal identifiers (last name, date of birth, SSN) do not match the SSA database.	Monthly	PHAs/MFH Owners
SSA Identity Test)	*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>
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<p>Income Information for PIH Programs</p> <p>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><b>New Admissions:</b></p> <p>Review new admissions within 120 days after the move-in information is transmitted to HUD to confirm/validate the income reported by the household.<sup>42</sup></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 (HHS) using the National Directory of New Hires (NDNH) database, and the SSA.</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 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.</p> <p>*See note under Summary above about updates to the MFH and Public Housing Income Discrepancy Reports.</p>	<p>PHAs</p>



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 PHAs 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 PHAs's policy is to require an IR for increases in income after an IR decrease, then the PHAs 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 obtain written, third-party verification of any income reported by the tenant.	As identified in a PHA's ACOP or Administrative Plan or a MFH Owner's written EIV policies and procedures.	PHAs/MFH Owners

**VERIFICATION HIERARCHY**

Level	Verification Technique	Ranking/Order of Acceptability
6	Upfront Income Verification (UIV), using HUD's Enterprise Income Verification (EIV) system	<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>
5	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	Written, Third-Party Verification Form	<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 PHAs 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	Oral Third-Party Verification	Medium
1	Self-Certification (not third-party verification)	<p>Low</p> <ul style="list-style-type: none"> <li>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.</li> <li>May be used as highest form of verification when the family reports zero income.</li> </ul>

## Zero Income Procedures

PHAs may accept a self-certification of zero income from the family at admission and at reexamination without taking any additional steps to verify zero reported income. HUD does not require that such self-certification be notarized. PHAs are reminded that they must verify families' income in EIV within 120 days after admission, except where the PHAs used Safe Harbor documentation to verify a family's income.

PHAs have discretion to establish reasonable procedures to manage the risk of unreported income, such as asking families to complete a zero income worksheet at admission or periodically after admission to determine if they have any sources of unreported income, or searching an upfront income verification source (see Level 5) for unreported income, such as a public benefits database to which the PHAs has access. These procedures are meant to avoid improper payments and the need for repayment agreements.

In calculating annual income from a zero income worksheet, PHAs must not assign monetary value to non-monetary in-kind donations from a food bank or similar organization received by the family (24 CFR § 5.609(b)(24)(vi)). PHAs perform an interim reexamination only due to an increase in the family's adjusted income (24 CFR §§ 5.657(c)(3); 882.515(b)(3); 891.410(g)(2); 891.610(g)(2); 960.257(b)(3); and 982.516(c)(3)).

PHAs that establish zero income procedures must update their local discretionary policies, procedures, and forms to comply with the final rule requirements. For example, families who begin receiving income which does not trigger an interim

### **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.*

## **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.*

## ASSIGNMENT OF BEDROOM SIZES (SUBSIDY STANDARDS)

The Westerly Housing Authority will issue a housing choice voucher for a particular bedroom size – the bedroom size is a factor in determining the family’s level of assistance. The following guidelines will determine each family’s unit size without overcrowding or over-housing:

<i>Number of Bedrooms</i>	<i>Number of Persons</i>	
	<i>Minimum</i>	<i>Maximum</i>
0	1	1
1	1	2
2	2	4
3	3	6
4	4	8
5	5	10

*These standards are based on the assumption that each bedroom will accommodate no more than two (2) persons. Two adults will share a bedroom unless related by blood.*

*In determining bedroom size, the PHA will include the presence of children to be born to a pregnant woman, children who are in the process of being adopted, children whose custody is being obtained, children currently under a 50% or more joint custody decree, children who are temporarily away at school or temporarily in foster-care.*

*Bedroom size will also be determined using the following guidelines:*

- A. Children of the same sex will share a bedroom.*
- B. Children of the opposite sex, both under the age of 10, will share a bedroom.*
- C. Persons of different generations will not be required to share a bedroom.*
- D. Foster adults and children will not be required to share a bedroom with family members.*
- E. Live-in aides will get a separate bedroom.*

*The PHA will grant exceptions to normal occupancy standards when a family requests a larger size than the guidelines allow and documents a disability or a medical reason why the larger size is necessary.*

*The family unit size will be determined by the PHA in accordance with the above guidelines and will determine the maximum rent subsidy for the family; however, the family may select a unit that may be larger or smaller than the family unit size. If the family selects a smaller unit, the payment standard for the smaller size will be used to calculate the subsidy. If the family selects a larger size, the payment standard for the family unit size will determine the maximum subsidy.*

## **BRIEFING**

When the Westerly Housing Authority selects a family from the waiting list, the family will be invited to attend a briefing explaining how the program works. In order to receive a housing choice voucher all of the adult members of the family are required to attend the briefing. If they cannot attend the originally scheduled briefing, they may attend a later session. If the family fails to attend two briefings without good cause, they will be denied admission.

If an applicant with a disability requires auxiliary aids to gain full benefit from the briefing, the Housing Authority will furnish such aids where doing so would not result in a fundamental alteration of the nature of the program or in an undue financial or administrative burden. In determining the most suitable auxiliary aid, the Housing Authority will give primary consideration to the requests of the applicant. Families unable to attend a briefing due to a disability may request a reasonable accommodation such as having the briefing presented at an alternate location.

The briefing will cover at least the following subjects:

- A. A description of how the program works;
- B. Family and owner responsibilities;
- C. Where the family may rent a unit, including inside and outside the Housing Authority's jurisdiction;
- D. Types of eligible housing;
- E. An explanation of how portability works, including how the family's assistance can be affected through re-screening by the Receiving Housing Authority, changes in the subsidy and payment standards, and other elements of the portability process that could affect the family's assistance. The Westerly Housing Authority will not discourage the family from choosing to live anywhere in or outside its jurisdiction under portability procedures, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order;
- F. An explanation of the advantages of living in an area that does not have a high concentration of poor families, including maps that show locations of housing opportunities outside areas of poverty or minority concentration, both within and outside its jurisdiction and neighboring its jurisdiction; has assembled information about job opportunities, schools, transportation, and other services in these areas;
- G. An explanation that the family share of rent may not exceed 40% of the family's monthly adjusted income if the gross rent exceeds the applicable payment standard when the family initially rents a unit and the fact that the family may have to pay a security deposit from its own funds;



- H. For a welfare-to-work family, the Westerly Housing Authority will include specification of any local obligations of a welfare-to-work family and an explanation that failure to meet these obligations is grounds for the Westerly Housing Authority to deny or terminate assistance.
- I. A description of the homeownership program if one exists; and
- J. An explanation of information contained in the Housing Choice Voucher packet.

## **PACKET**

*During the briefing, the Housing Authority will give the family a packet covering at least the following subjects:*

- A. *The term of the housing choice voucher and the Housing Authority's policy on extensions and how suspensions of the term work under HUD's regulation. The packet will include information on how to request an extension and forms for requesting extensions;*
- B. *How the Housing Authority determines the housing assistance payment and total tenant payment for the family;*
- C. *Information on how the payment standard is determined, exception payment standard rent areas, and the utility allowance schedule;*
- D. *How the Housing Authority determines the maximum rent for an assisted unit;*
- E. *Where the family may lease a unit. For families qualified to lease outside the Housing Authority's jurisdiction, the packet includes an explanation of how portability works, including how the family's assistance can be affected through re-screening by the Receiving Housing Authority, changes in the subsidy and payment standards, other elements of the portability process that could affect the family's assistance, and a list of names, addresses and phone numbers of contact persons at neighboring housing authorities;*
- F. *The HUD-required tenancy addendum that provides the language that must be included in any assisted lease, and a sample contract;*
- G. *The request for approval of the tenancy form and an explanation of how to request Housing Authority approval of a unit;*
- H. *A statement of the Housing Authority's policy on providing information to prospective owners. This policy requires applicants to sign disclosure statements allowing the Housing Authority to provide prospective owners with the family's*

*current and prior addresses and the names and addresses of the landlords for those addresses;*

- I. The Housing Authority's subsidy standards, including when the Housing Authority will consider granting exceptions to the standards such as a reasonable accommodation to a person with a disability;*
- J. The HUD brochure on how to select a unit ("A Good Place to Live") and any other information HUD provides on the subject;*
- K. The HUD-required lead-based paint brochure;*
- L. Information on Federal, State, and local equal opportunity laws; the brochure "Fair Housing: It's Your Right;" and a copy of the housing discrimination complaint form;*
- M. A list of landlords or other resources (such as newspapers, organizations, and online search tools) known to the PHA who may be willing to lease a unit to the family or help the family find a unit, including owners with properties located outside areas of poverty or minority concentration;*
- N. Notice that if the family includes a person with disabilities, the family may request a current list of accessible units known to the PHA that may be available;*
- O. The family's obligations under the program;*
- P. The grounds upon which the Housing Authority may terminate assistance because of the family's action or inaction;*
- Q. PHA informal hearing procedures, including when the Housing Authority is required to provide the opportunity for an informal hearing, and information on how to request a hearing;*
- R. The PHA owner information brochure. This brochure can be given by the applicant to a prospective owner to help explain the program;*
- S. An explanation of rights afforded to Housing Choice Voucher participants under the Violence Against Women Act;*
- T. A written explanation of the advantages of living in an area that does not have a high concentration of poor families, including maps that show locations of housing opportunities outside areas of poverty or minority concentration, both within and outside its jurisdiction and neighboring its jurisdiction; has assembled information about job opportunities, schools, transportation, and other services in these areas; and*



# 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.

## **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 § 982.*
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.*

## **ISSUANCE OF VOUCHER AND PAYMENT STANDARDS**

### **REQUEST FOR APPROVAL OF TENANCY**

Once all family information has been verified, their eligibility determined, their subsidy calculated, and they have attended the family briefing, the Westerly Housing Authority will issue the housing choice voucher. At this point the family begins their search for a unit.

When the family finds a unit that the owner is willing to lease under the program, the family and the owner will complete and sign a proposed lease, the HUD required tenancy addendum and the request for approval of the tenancy form. The terms of the HUD tenancy addendum shall prevail over any conflicting provisions of the lease. The family will submit the proposed lease and the request form to the Housing Authority during the term of the housing choice voucher. The Housing Authority will review the request, the lease, and the HUD-required tenancy addendum and make an initial determination of approval of tenancy. The Housing Authority may assist the family in negotiating changes that may be required for the tenancy to be approvable. Once it appears the tenancy may be approvable, the Housing Authority will schedule an appointment to inspect the unit within 15 calendar days after the receipt of inspection request from the family and owner. The 15-day period is suspended during any period the unit is unavailable for inspection. The Housing Authority will promptly notify the owner and the family whether the unit and tenancy are approvable.

During the initial stage of qualifying the unit, the Housing Authority will provide the prospective owner with information regarding the program. Information will include Housing Authority and owner responsibilities for screening and other essential program elements. The Housing Authority will provide the owner with the family's current and prior address as shown in the Housing Authority records along with the name and address (if known) of the landlords for those addresses.

All of these functions may be conducted electronically via Email or direct upload to the Westerly Housing Authority. The RFTA may also be executed electronically by both the landlord or tenant.

Additional screening is the responsibility of the owner.

### **TERM OF THE HOUSING CHOICE VOUCHER**

The initial term of the voucher will be 60 calendar days and will be stated on the Housing Choice Voucher.

The Housing Authority may grant one or more extensions of the term, but the initial term plus any extensions will not exceed 120 calendar days from the initial date of issuance without an extraordinary reason. To obtain an extension, the family must make a request in writing prior to the expiration date. A statement of the efforts the family has made to



find a unit must accompany the request. A sample extension request form and a form for recording their search efforts will be included in the family's briefing packet. If the family documents their efforts and additional time can reasonably be expected to result in success, the Housing Authority will grant the length of request sought by the family or 60 calendar days, whichever is less.

If the family includes a person with disabilities and the family requires an extension due to the disability, the Housing Authority will grant an extension allowing the family the full 120 calendar days search time. If the Housing Authority determines that additional search time would be a reasonable accommodation, it will grant the additional search time.

Upon submittal of a completed request for approval of tenancy form, the Westerly Housing Authority will suspend the term of the housing choice voucher. The term will be in suspension until the date the Housing Authority provides written notice that the request has been approved or denied. This policy allows families the full term (60 calendar days, or more with extensions) to find a unit, not penalizing them for the period during which the Housing Authority is taking action on their request. A family may submit a second request for approval of tenancy before the Housing Authority finalizes action on the first request. In this case the suspension will last from the date of the first submittal through the Housing Authority's action on the second submittal. No more than two requests will be concurrently considered.

If a family's voucher expires, the family is no longer eligible for housing assistance. They are free to re-apply to the Housing Choice Voucher program and start over again at the bottom of the waiting list. If the waiting list is closed, they must wait until the Westerly Housing Authority is once again accepting applicants for the Section 8 program. They will be treated exactly like all other new applicants for the program.

#### **APPROVAL TO LEASE A UNIT**

The Westerly Housing Authority will approve a lease if all of the following conditions are met:

- A. The unit is eligible;
- B. The unit is inspected by the Housing Authority and passes HQS/NSPIRE or only fails non-life-threatening conditions. This inspection may also be conducted remotely using the RVI process as illustrated in PIH notice 2020-31 and in the Inspection protocol in subsection 2. This will apply to all initial inspections. Leases for failing non-life-threatening items will only be approved for owners who have not had any rent payments abated over the previous 24 months. Both the family and owner will be notified of the inspection results in writing with detailed information about any failed and/or inconclusive inspection items. Families can accept a unit with acceptable failed item or continue their search for an acceptable unit at their option;

- C. The lease is approvable and includes the following:
  - 1. The names of the owner and the resident;
  - 2. The address of the unit rented;
  - 3. The term of the lease (initial term and any provisions for renewal);
  - 4. The amount of the monthly rent to owner;
  - 5. A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family; and
  - 6. The required HUD tenancy addendum.
- D. The rent to owner is reasonable;
- C. The family's share of rent does not exceed 40% of their monthly adjusted income if the gross rent exceeds the applicable payment standard;
- F. The owner certifies that he or she is not in a conflict of interest situation with the resident.
- G. The owner has not been found to be debarred, suspended, or subject to a limited denial of participation by HUD or the Housing Authority; and
- H. The family continues to meet all eligibility and screening criteria.

If tenancy approval is denied, the Housing Authority will advise the owner and the family in writing and advise them also of any actions they could take that would enable the Housing Authority to approve the tenancy. If non-life-threatening conditions fail the inspection, the owner must correct the failures within thirty (30) calendar days and provide acceptable proof of the appropriate repairs to the Westerly Housing Authority.

The lease term may begin only after all of the following conditions are met:

- A. The unit passes the Housing Authority HQS/NSPIRE inspection or only fails non-life-threatening conditions. Leases failing non-life-threatening items will only be approved for owners who have not had any rent payments abated over the previous 24 months;
- B. The family's share of rent does not exceed 40% of their monthly adjusted income if the gross rent exceeds the applicable payment standard;

- C. The landlord and resident sign the lease to include the HUD required addendum; and
- D. The Housing Authority approves the leasing of the unit.

The Housing Authority will prepare the contract when the unit is approved for tenancy. Generally, the landlord, simultaneously with the signing of the lease and the HUD required tenancy addendum, will execute the contract. Upon receipt of the executed lease and the signed contract by the landlord, the Housing Authority will execute the contract. The Housing Authority will not pay any housing assistance to the owner until the contract is executed. If an owner fails to make the required repairs by the deadline, HAP payments will be withheld until the repairs have been completed. The suspended payments will not be repaid after the repairs. If the repairs are not completed within thirty (30) days of the initial inspection, the HAP Contract will be canceled.

The Westerly Housing Authority will notify owners and families, as applicable, of the new procedures and timelines for assistance payments adopted on xxxxxxxxx. If the initial inspection on the unit identifies one or more non-life-threatening deficiencies, the Westerly Housing Authority will provide the family a list of the deficiencies and offer the family the opportunity to decline to enter into the assisted lease without losing the voucher. The Westerly Housing Authority will also notify the family that if the owner fails to correct the non-life-threatening deficiencies within the Westerly Housing Authority-specified time period, the Westerly Housing Authority will terminate the HAP contract, which in turn terminates the assisted lease, and the family will have to move to another unit in order to receive voucher assistance.

Contracts will not be executed later than 60 calendar days after the beginning of the lease term barring unusual circumstances. In no event will a contract be consummated after 180 days has passed.

Any contract executed after the 60-day period will be void and the Housing Authority will not pay housing assistance to the owner.

#### **WESTERLY HOUSING AUTHORITY DISAPPROVAL OF OWNER**

The Housing Authority will deny participation by an owner at the direction of HUD (one who has been debarred, suspended, or is subject to a limited denial of participation). The Housing Authority will also deny the owner's participation for any of the following reasons:

- A. The owner has violated any obligations under a Section 8 Housing Assistance Payments Contract;
- B. The owner has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program;

- C. The owner has engaged in drug-related criminal activity or any violent criminal activity;
- D. The owner has a history or practice of non-compliance with HQS for units leased under Section 8 or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other Federal housing program;
- E. The owner has a history or practice of renting units that fail to meet State or local codes;
- F. The owner has not paid State or local real estate taxes, fines, or assessments;
- G. The owner refuses (or has a history of refusing) to evict families for drug-related or violent criminal activity, or for activity that threatens the health, safety or right of peaceful enjoyment of the:
  - 1. premises by residents, Westerly Housing Authority employees or owner employees; or
  - 2. residences by neighbors;
- H. If the owner is the parent, child, grandparent, grandchild, sister, or brother or any member of the family of an applicant seeking the initial use of a housing choice voucher (currently shopping) unless the Westerly Housing Authority determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities;
- I. The Housing Authority has been informed by HUD that the federal government has instituted an administrative or judicial action against the owner for a violation of the Fair Housing Act or other federal equal opportunity requirements and such action is pending or a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements; or
- J. Other conflicts of interest under Federal, State, or local law.

**INELIGIBLE/ELIGIBLE HOUSING**

The following types of housing cannot be assisted under the Section 8 Tenant-Based Program:

- A. A public housing or Indian housing unit;
- B. A unit receiving project-based assistance under a Section 8 Program;
- C. Nursing homes, board and care homes, or facilities providing continual psychiatric, medical or nursing services;

- D. College or other school dormitories;
- E. Units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions;
- F. A unit occupied by its owner. This restriction does not apply to cooperatives or to assistance on behalf of a manufactured home owner leasing a manufactured home space or units being purchased under a Section 8 Homeownership Program; and
- G. A unit receiving any duplicative Federal, State, or local housing subsidy. This does not prohibit renting a unit that has a reduced rent because of a tax credit.

The Westerly Housing Authority will not approve a lease for any of the following special housing types, except as a reasonable accommodation for a family with disabilities **ANY OF THESE CAN BE ALLOWED IF THE PHA DESIRES**

- A. Congregate housing
- B. Group homes
- C. Shared housing
- D. Cooperative housing
- E. Single room occupancy housing

The Westerly Housing Authority will approve leases for the following housing types:

- A. Single family dwellings
- B. Apartments
- C. Manufactured housing
- D. Manufactured home space rentals
- E. Lease-purchase agreements. A family leasing a unit with assistance under the program may enter into an agreement with an owner to purchase the unit. So long as the family is receiving such rental assistance, all requirements applicable to families otherwise leasing units under the tenant-based program apply. Any homeownership premium (e.g., increment of value attributable to the value of the lease-purchase right or agreement such as an extra monthly payment to accumulate a down payment or reduce the purchase price) included in the rent to the owner that would result in a higher subsidy amount than would otherwise be paid by the Westerly Housing Authority must be absorbed by the family.

In determining whether the rent to owner for a unit subject to a lease-purchase agreement is a reasonable amount in accordance with 24 CFR 982.503 which states:

**Payment standard amount and schedule.**

**(a) *Payment standard schedule.***

(1) HUD publishes the fair market rents for each market area in the United States (see [part 888 of this title](#)). The PHA must adopt a payment standard schedule that establishes voucher payment standard amounts for each FMR area in the PHA jurisdiction. For each FMR area, the PHA must establish payment standard amounts for each “unit size.” Unit size is measured by number of bedrooms (zero-bedroom, one-bedroom, and so on).

(2) The payment standard amounts on the PHA schedule are used to calculate the monthly housing assistance payment for a family ([§ 982.505](#)).

(3) The PHA voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area, or may establish a separate payment standard amount for each designated part of the FMR area.

**(b) *Establishing payment standard amounts.***

**(1)**

(i) The PHA may establish the payment standard amount for a unit size at any level between 90 percent and 110 percent of the published FMR for that unit size. HUD approval is not required to establish a payment standard amount in that range (“basic range”). The PHA must revise the payment standard amount no later than 3 months following the effective date of the published FMR if a change is necessary to stay within the basic range.

(ii) The PHA may establish a separate payment standard amount within the basic range for a designated part of an FMR area.

(iii) A PHA that is not in a designated Small Area FMR area or has not opted to voluntarily implement Small Area FMRs under [24 CFR 888.113\(c\)\(3\)](#) may establish exception payment standards for a ZIP code area above the basic range for the metropolitan FMR based on the HUD published Small Area FMRs. The PHA may establish an exception payment standard up to 110 percent of the HUD published Small Area FMR for that ZIP code area. The PHA must notify HUD if it establishes an exception payment standard based on the Small Area FMR. The exception payment standard must apply to the entire ZIP code area.

(iv) At the request of a PHA administering the HCV program under Small Area FMRs under [§ 888.113\(c\)\(3\)](#), HUD may approve an exception payment standard for a Small Area FMR area above the 110 percent of the published FMR in accordance with conditions set forth by Notice in the Federal Register. The requirements of [paragraph \(c\)](#) of this section do not apply to these exception payment standard requests and approvals.

(v) The PHA may establish an exception payment standard of not more than 120 percent of the published FMR if required as a reasonable accommodation in accordance with [24 CFR part 8](#) for a family that includes a person with a disability. Any unit approved under an exception payment standard must still meet the reasonable rent requirements found at [§ 982.507](#).

(vi) The PHA may establish an exception payment standard of more than 120 percent of the published FMR if required as a reasonable accommodation in accordance with [24 CFR part 8](#) for a family that includes a person with a disability after approval from HUD. Any unit approved under an exception payment standard must still meet the reasonable rent requirements found at [§ 982.507](#).

(2) Except as described in [paragraphs \(b\)\(1\)\(iii\)](#) through [\(v\)](#) of this section, the PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. HUD has sole discretion to grant or deny approval of a higher or lower payment standard amount. [Paragraphs \(c\)](#) and [\(e\)](#) of this section describe the requirements for approval of a higher payment standard amount (“exception payment standard amount”).

**(c) HUD approval of exception payment standard amount -**

(1) **HUD discretion.** At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the fair market rent area (called an “exception area”). HUD may approve an exception payment standard amount in accordance with this [paragraph \(c\)](#) of this section for all units, or for all units of a given unit size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount.

(2) **Above 110 percent of FMR to 120 percent of published FMR.** The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR (upper range) if the HUD Field Office determines that approval is justified by the median rent method or the 40th percentile rent or the Small Area FMR method as described in [paragraph \(c\)\(2\)\(ii\)](#) of this section (and that such approval is also supported by an appropriate program justification in accordance with [paragraph \(c\)\(4\)](#) of this section).

(i) **Median rent method.** In the median rent method, HUD determines the exception payment standard amount by multiplying the FMR times a fraction of which the numerator is the median gross rent of the exception area and the denominator is the median gross rent of the entire FMR area. In this method, HUD uses median gross rent data from the most recent decennial United States census, and the exception area may be any geographic entity

within the FMR area (or any combination of such entities) for which median gross rent data is provided in decennial census products.

(ii) **40th percentile rent or Small Area FMR method.** In this method, HUD determines that the area exception payment standard amount equals application of the 40th percentile of rents for standard quality rental housing in the exception area or the Small Area FMR. HUD determines whether the 40th percentile rent or Small Area FMR applies in accordance with the methodology described in [24 CFR 888.113](#) for determining FMRs. A PHA must present statistically representative rental housing survey data to justify HUD approval.

(3) ***Above 120 percent of FMR.***

(i) At the request of a PHA, the Assistant Secretary for Public and Indian Housing may approve an exception payment standard amount for the total area of a county, PHA jurisdiction, or place if the Assistant Secretary determines that:

(A) Such approval is necessary to prevent financial hardship for families;

(B) Such approval is supported by statistically representative rental housing survey data to justify HUD approval in accordance with the methodology described in [§ 888.113 of this title](#); and

(C) Such approval is also supported by an appropriate program justification in accordance with [paragraph \(c\)\(4\)](#) of this section.

(ii) For purposes of [paragraph \(c\)\(3\)](#) of this section, the term “place” is an incorporated place or a U.S. Census designated place. An incorporated place is established by State law and includes cities, boroughs, towns, and villages. A U.S. Census designated place is the statistical counterpart of an incorporated place.

(4) ***Program justification.***

(i) HUD will only approve an exception payment standard amount (pursuant to paragraph (c)(2) or [paragraph \(c\)\(3\)](#) of this section) if HUD determines that approval of such higher amount is needed either:

(A) To help families find housing outside areas of high poverty, or

(B) Because voucher holders have trouble finding housing for lease under the program within the term of the voucher.

(ii) HUD will only approve an exception payment standard amount (pursuant to [paragraph \(c\)\(3\)](#) of this section) after six months from the date of HUD approval of an exception payment standard pursuant to [paragraph \(c\)\(2\)](#) of this section for the area.



(5) **Population.** The total population of HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area, except when applying Small Area FMR exception areas under [paragraph \(b\)\(1\)\(iii\)](#) of this section.

(6) **Withdrawal or modification.** At any time, HUD may withdraw or modify approval to use an exception payment standard amount.

(d) **HUD approval of payment standard amount below the basic range.** HUD may consider a PHA request for approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve PHA establishment of a payment standard lower than the basic range. In determining whether to approve the PHA request, HUD will consider appropriate factors, including rent burden of families assisted under the program. HUD will not approve a lower payment standard if the family share for more than 40 percent of participants in the PHA's voucher program exceeds 30 percent of adjusted monthly income. Such determination may be based on the most recent examinations of family income.

(e) **HUD approval of success rate payment standard amounts.** In order to increase the number of voucher holders who become participants, HUD may approve requests from PHAs whose FMRs are computed at the 40th percentile rent to establish higher, success rate payment standard amounts. A success rate payment standard amount is defined as any amount between 90 percent and 110 percent of the 50th percentile rent, calculated in accordance with the methodology described in [§ 888.113 of this title](#).

(1) A PHA may obtain HUD Field Office approval of success rate payment standard amounts provided the PHA demonstrates to HUD that it meets the following criteria:

(i) Fewer than 75 percent of the families to whom the PHA issued rental vouchers during the most recent 6 month period for which there is success rate data available have become participants in the voucher program;

(ii) The PHA has established payment standard amounts for all unit sizes in the entire PHA jurisdiction within the FMR area at 110 percent of the published FMR for at least the 6 month period referenced in [paragraph \(e\)\(1\)\(i\)](#) of this section and up to the time the request is made to HUD; and

(iii) The PHA has a policy of granting automatic extensions of voucher terms to at least 90 days to provide a family who has made sustained efforts to locate suitable housing with additional search time.

(2) In determining whether to approve the PHA request to establish success rate payment standard amounts, HUD will consider whether the PHA has a SEMAP overall performance rating of "troubled". If a PHA does not yet have a SEMAP rating, HUD will consider the PHA's SEMAP certification.

(3) HUD approval of success rate payment standard amounts shall be for all unit sizes in the FMR area. A PHA may opt to establish a success rate payment standard amount for one or more unit sizes in all or a designated part of the PHA jurisdiction within the FMR area.

(f) *Payment standard protection for PHAs that meet deconcentration objectives.* Paragraph (f) of this section applies only to a PHA with jurisdiction in an FMR area where the FMR had previously been set at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area, pursuant to [§ 888.113\(i\)\(3\)](#), but is now set at the 40th percentile rent.

(1) Such a PHA may obtain HUD Field Office approval of a payment standard amount based on the 50th percentile rent if the PHA scored the maximum number of points on the deconcentration bonus indicator in [§ 985.3\(h\)](#) in the prior year, or in two of the last three years.

(2) HUD approval of payment standard amounts based on the 50th percentile rent shall be for all unit sizes in the FMR area that had previously been set at the 50th percentile rent pursuant to [§ 888.113\(i\)\(3\)](#). A PHA may opt to establish a payment standard amount based on the 50th percentile rent for one or more unit sizes in all or a designated part of the PHA jurisdiction within the FMR area.

(g) *HUD review of PHA payment standard schedules.*

(1) HUD will monitor rent burdens of families assisted in a PHA's voucher program. HUD will review the PHA's payment standard for a particular unit size if HUD finds that 40 percent or more of such families occupying units of that unit size currently pay more than 30 percent of adjusted monthly income as the family share. Such determination may be based on the most recent examinations of family income.

(2) After such review, HUD may, at its discretion, require the PHA to modify payment standard amounts for any unit size on the PHA payment standard schedule. HUD may require the PHA to establish an increased payment standard amount within the basic range.

If a property has both HUD issued project-based assisted units and market rate units, housing choice vouchers can be utilized in the market rate units, but not the project-based units. In this situation, rent reasonableness will dictate that the rent for the housing choice voucher unit will equal the HUD-approved rent (the basic rent) for the project-based units as long as it is within the Westerly Housing Authority's payment standard. Also, the Westerly Housing Authority's utility schedule will be utilized in setting the rent, not the property's utility schedule. Finally, the Westerly Housing Authority will re-certify everyone living in a property utilizing tenant-based housing choice vouchers and the landlord will be responsible for the re-certification of those residing in the property using project-based vouchers.

## **SECURITY DEPOSIT**

The owner may collect a security deposit from the participant in an amount not in excess of amounts charged in private market practice and not in excess of amounts charged by the owner to unassisted residents in the same complex.

When the resident moves out of the dwelling unit, the owner, subject to State or local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid rent payable by the participant, damages to the unit or for other amounts the family owes under the lease.

The owner must give the participant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must refund promptly the full amount of the unused balance to the resident in compliance with State law.

If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant.

## 2. INSPECTION POLICIES AND HOUSING QUALITY STANDARDS

The PHA will inspect all units to ensure that they meet Housing Quality Standards (HQS) or NSPIRE (only if the PHA is participating in the Demonstration). No unit will be initially placed on the HCV Program unless the NSPIRE is met. Units will be inspected at least annually, and at other times as needed, to determine if the units meet NSPIRE.

The PHA must be allowed to inspect the dwelling unit at reasonable times with reasonable notice. The family and owner will be notified of the inspection appointment by first class mail or email or other electronic means. If the family cannot be at home for the scheduled inspection appointment, the family must call and reschedule the inspection or make arrangements to enable the Housing Authority to enter the unit and complete the inspection.

If the family misses the scheduled inspection and fails to reschedule the inspection, the PHA will only schedule one more inspection. If the family misses two inspections, the PHA will consider the family to have violated a Family Obligation and their assistance will be terminated.

In accordance with the Housing Assistance Payments Contract and PIH notice 2023-06, the Westerly Housing Authority will inspect the unit and premises at any time the PHA determines necessary to ensure that the unit meets HQS and must notify the owner of any NSPIRE deficiencies uncovered. In addition, the following inspection types are in effect.

### TYPES OF INSPECTIONS

*There are seven types of inspections the PHA will perform:*

- A. *Initial Inspection - An inspection that must take place to ensure that the unit passes HQS or NSPIRE before assistance can begin.*
- B. *Regular Inspection - An inspection to determine that the unit continues to meet NSPIRE. Regular inspections shall be made at least annually or every three years.*
- C. *Complaint Inspection - An inspection caused by the Authority receiving a complaint on the unit by anyone.*
- D. *Special Inspection - An inspection caused by a third party, i.e., HUD, needing to view the unit.*
- E. *Emergency - An inspection that takes place in the event of a perceived emergency. These will take precedence over all other inspections.*

- F. *Move-Out Inspection (if applicable) - An inspection required for units in service before October 2, 1995, and optional after that date. These inspections document the condition of the unit at the time of the move-out.*
- G. *Quality Control Inspection - Supervisory inspections based on at least the minimum number required by the Section 8 Management Assessment Program (SEMAP).*

#### **OWNER AND FAMILY RESPONSIBILITY**

- A. *Owner Responsibility for NSPIRE.*
  - 1. *The owner must maintain the unit in accordance with NSPIRE.*
  - 2. *If the owner fails to maintain the dwelling unit in accordance with NSPIRE, the PHA will take prompt and vigorous action to enforce the owner's obligations. The PHA's remedies for such breach of the NSPIRE include termination, suspension or reduction of housing assistance payments and termination of the HAP contract.*
  - 3. *The PHA will not make any housing assistance payments for a dwelling unit that fails to meet the NSPIRE, unless the owner corrects the defect within the period specified by the PHA and the PHA verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. If the failure is of the lead-based paint standard on a regular or interim inspection, the 24-hour standard becomes a reasonable period of time as determined by the PHA. For other defects the owner must correct the defect within no more than 30 calendar days (or any PHA approved extension). If the required repair is not made in a timely manner, the rent shall be abated beginning with the next rent check. **If two months of consecutive checks are abated, the assistance shall be cancelled.***
  - 4. *The owner is not responsible for a breach of the NSPIRE that is not caused by the owner, and for which the family is responsible. Furthermore, the PHA may terminate assistance to a family because of the NSPIRE breach caused by the family.*
  - 5. *When the PHA determines the HAP contract is breached for NSPIRE or other reasons, the PHA must take certain steps to comply with the HAP contract and program requirements. In the event of the breach of the HAP contract, the PHA must notify the owner in writing of the determination of the breach and the reasons for that determination. The notice may require the owner to take a corrective action by an established deadline. The PHA may recover any overpayment, suspend housing assistance payments, abate, or reduce the housing assistance payment, terminate the payment or terminate the HAP contract. The PHA may also obtain additional relief by judicial order or action, including specific performance, other injunctive*

relief, or order for damages. The PHA must provide the owner with written notice of any termination or reduction in housing assistance payments or the termination of the HAP contract.

**B. Family Responsibility for NSPIRE**

1. The family is responsible for a breach of the NSPIRE that is caused by any of the following:
  - a. The family fails to pay for any utilities that the owner is not required to pay for, but which are to be paid by the resident;
  - b. The family fails to provide and maintain any appliances that the owner is not required to provide, but which are to be provided by the participant; or
  - c. Any member of the household or a guest damages the dwelling unit or premises (damage beyond ordinary wear and tear).
2. If an NSPIRE breach caused by the family is life threatening, the family must correct the defect within no more than 24 hours. For other family-caused defects, the family must correct the defect within no more than 30 calendar days (or any PHA approved extension).
3. If the family has caused a breach of the NSPIRE, the PHA will take prompt and vigorous action to enforce the family obligations. The PHA may terminate assistance for the family in accordance with 24 CFR 982.552.

**Smoke detectors performance requirement -**

(1) Except as provided in paragraph (n)(2) of this section, each dwelling unit must have at least one battery-operated or hard-wired smoke detector, in proper operating condition, on each level of the dwelling unit, including basements but excepting crawl spaces and unfinished attics. Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any hearing-impaired person, smoke detectors must have an alarm system, designed for hearing-impaired persons as specified in NFPA 74 (or successor standards).

(2) For units assisted prior to April 24, 1993, owners who installed battery-operated or hard-wired smoke detectors prior to April 24, 1993 in compliance with HUD's smoke detector requirements, including the regulations published on July 30, 1992, (57 FR 33846), will not be required subsequently to comply with any additional requirements mandated by NFPA 74 (i.e., the owner would not be required to install a smoke detector in a basement not used for living purposes, nor would the owner be required to change the

**location of the smoke detectors that have already been installed on the other floors of the unit).**

**In addition, the PHA is required to ensure that all assisted units are fitted with a Carbon Monoxide Detector(s) in accordance with PIH notice 2022-01.**

***NSPIRE Standards as of 4/22 If your agency is participating NSPIRE keep this section and all references to NSPIRE if not remove them. For the standards please go to:***

*[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/reac/nspire/standards](https://www.hud.gov/program_offices/public_indian_housing/reac/nspire/standards)*

## **LEAD-BASED PAINT REQUIREMENTS AND RESPONSIBILITIES – SEE 24 CFR PART 35**

### **EXCEPTIONS TO THE HQS ACCEPTABILITY CRITERIA**

*The PHA will utilize the acceptability criteria as outlined above with applicable State and local codes. Additionally, the PHA has received HUD approval to require the following additional criteria: [THESE ARE EXAMPLES. FILL IN YOUR OWN ADDITIONS TO HQS IF YOU WANT THEM]*

- A. In each room, there will be at least one exterior window that can be opened and that contains a screen.*
- B. Adequate heat shall be considered to be 68 degrees.*
- C. In units where the resident must pay for utilities, each unit must have separate metering device(s) for measuring utility consumption.*
- D. A ¾" overflow pipe must be present on the hot water heater safety valves and installed down to within 6 inches of the floor.*

### **TIME FRAMES AND CORRECTIONS OF NSPIRE FAIL ITEMS**

- A. Correcting Initial NSPIRE Fail Items*

*The PHA will schedule a timely inspection of the unit on the date the owner indicates that the unit will be ready for inspection, or as soon as possible thereafter (within 5 business days) upon receipt of a Request for Tenancy Approval. The owner and participant will be notified in writing of the results of the inspection. If the unit fails NSPIRE, the owner and the participant will be advised to notify the PHA to reschedule a re-inspection when the repairs have been properly completed.*

*On an initial inspection, the owner will be given up to 30 calendar days to correct the items noted as failed, depending on the extent of the repairs that are required to be made. No unit will be placed in the program until the unit meets the NSPIRE requirements.*

**B. NSPIRE Fail Items for Units under Contract**

*The owner or participant will be given time to correct the failed items cited on the inspection report for a unit already under contract. If the failed items endanger the family's health or safety (using the emergency item in Section 12.7), the owner or participant will be given 24 hours to correct the violations. For less serious failures, the owner or participant will be given up to 30 calendar days to correct the failed item(s).*

*If the owner fails to correct the NSPIRE failed items after proper notification has been given, the PHA will abate payment and terminate the contract in accordance with Sections 12.8 and 17.0.*

*If the participant fails to correct the NSPIRE failed items that are family-caused after proper notification has been given, the PHA will terminate assistance for the family in accordance with Sections 12.2(B) and 17.0.*

**C. Time Frames for Corrections**

- 1. Emergency repair items must be abated within 24 hours.*
- 2. Repair of refrigerators, range and oven, or a major plumbing fixture supplied by the owner must be abated within 72 hours.*
- 3. Non-emergency items must be completed within 10 calendar days of the initial inspection.*
- 4. For major repairs, the owner will have up to 30 calendar days to complete.*

**D. Extensions**

*At the sole discretion of the PHA, extensions of up to 30 calendar days may be granted to permit an owner to complete repairs if the owner has made a good faith effort to initiate repairs. If repairs are not completed within 60 calendar days after the initial inspection date, the PHA will abate the rent and cancel the HAP contract for owner noncompliance. Appropriate extensions will be granted if a severe weather condition exists for such items as exterior painting and outside concrete work for porches, steps, and sidewalks.*

**EMERGENCY FAIL ITEMS**



*The following items are to be considered examples of emergency items that need to be abated within 24 hours:*

- A. No hot or cold water*
- B. No electricity*
- C. Inability to maintain adequate heat*
- D. Major plumbing leak*
- E. Natural gas, propane, or LP gas leak*
- F. Broken lock(s) on first floor doors or windows*
- G. Broken windows that unduly allow weather elements into the unit*
- H. Electrical outlet smoking or sparking*
- I. Exposed electrical wires which could result in shock or fire*
- J. Unusable toilet when only one toilet is present in the unit*
- K. Security risks such as broken doors or windows that would allow intrusion*
- L. Other conditions which pose an immediate threat to health or safety*

#### ***ABATEMENT***

*When a unit fails to meet NSPIRE and the owner has been given an opportunity to correct the deficiencies, but has failed to do so within the required timeframe, the rent for the dwelling unit will be abated as of the first day of the next month.*

*If the corrections of deficiencies are not made the abatement will continue until the HAP contract is terminated. When the deficiencies are corrected, the PHA will end the abatement the day the unit passes inspection. Rent will resume the day the unit passes inspection and be paid the first day of the next month.*

*For participant caused NSPIRE deficiencies, the owner will not be held accountable and the rent will not be abated. The participant is held to the same standard and timeframes for correction of deficiencies as owners. If repairs are not completed by the deadline, the PHA will send a notice of termination to both the participant and the owner. The participant will be given the opportunity to request an informal hearing.*

*HAP contracts will be terminated after giving the owner thirty (30) calendar days' notice from the first day of a month. It will be sent with the Notice of Abatement. Termination will end any abatement action.*

### **RE-INSPECTION FEES**

The PHA will charge property owners a reasonable HQS re-inspection fee in two situations – when an owner has notified the PHA that a previously cited deficiency has been corrected and it has not been corrected and/or if the allotted time for repairs identified in a previous inspection has elapsed and a re-inspection determines that the repairs that are the responsibility of the owner have not been made. Re-inspection fees will not be charged for deficiencies caused by the participant family, initial inspections, regularly scheduled inspections, instances where the inspector was not able to gain access to the unit, and for re-inspections caused by new deficiencies identified during a re-inspection. This fee shall be charged on the first and subsequent re-inspections.

The re-inspection fee shall be \$35.00 per re-inspection. This fee is a combination of the actual cost incurred by the PHA and a slight penalty to the owner to discourage the need for re-inspections. This fee is not contrary to any state or local law. Re-inspection fees may not be passed on to the family.

### **REMOTE VIDEO INSPECTIONS**

*In Accordance with PIH notice 2020-31, the PHA will/may participate in Remote Video Inspections. **This measure is temporary and will be applied during a PANDEMIC, NATURAL DISASTER, OR BUDGET CONSTRAINTS.***

*Inspections generally follow 4-phases: (1) administrative preparation, (2) pre-inspection planning, (3) performance of the inspection and (4) post inspection. **ITEMS IN BOLD ARE THINGS YOU NEED TO CONSIDER, EXPAND ON AND/OR CHANGE.***

#### *Administrative Preparation*

*Evaluate whether incorporating technology into the inspection process requires an update of the HCV Administrative Plan to provide stakeholders fair notice of the purpose and benefits of utilizing RVIs for NSPIRE inspections. **A best practice is to describe locally imposed requirements about who can participate in an RVI and additional requirements if an RVI cannot be successfully completed.***

*Determine if the use of technology as part of the inspection process constitutes a significant amendment to the Annual Plan. PHAs revise Annual Plans in accordance with; [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/pha](https://www.hud.gov/program_offices/public_indian_housing/pha).*

#### *Pre-Inspection Planning*

*Assess Equipment Needs. Consider whether the party performing the RVI has the equipment, and if not, how it is to be provided. HUD recommends the following:*

*1. Distance measuring device, i.e., a tape measure.*

2. Lighting device, i.e., a flashlight.
3. Circuit analyzer to test the low-voltage operation of electrical lines.
4. Means to test smoke and carbon monoxide detectors.
5. Temperature device for displaying the internal unit temperature.
6. Smartphone or tablet is fully charged with a reliable internet connection. Wi-Fi has the best streaming reliability and quality, but 4G or better cellular data service supports video streaming. The device needs a high camera resolution (megapixels, sensors, and pixel size) to see details such as paint chips or broken glass.
7. Any additional items the PHA deems necessary.

*Scheduling RVI. Use standard NSPIRE procedures for scheduling the inspection. HUD recommends the tenant, or the landlord or property manager attend the RVI inspection. Additionally, the RVI tenant notifications should explain RVI, the rationale for RVI implementation, and provide a contact number and email address for tenants to raise questions or concerns.*

*Ensure the inspector and designated proxy successfully completes the free online Lead based Paint Visual Assessment Training Course, for properties built before 1978 where a child under 6 resides or will reside (Reference [www.hud.gov/program\\_offices/healthy\\_homes/enforcement/regulations](http://www.hud.gov/program_offices/healthy_homes/enforcement/regulations) and 24 CFR 35.1215 (a)(1)). Persons trained are to email the certificate of completion to the inspector. The inspector adds the certificate of completion to the inspection file.*

### **Performing the Inspection**

*Provide adequate privacy safeguards for the protection of Personally Identifiable Information (PII). The PHA's NSPIRE inspector can be in the PHA office or other remote location, using equipment that provides PII safeguards.*

*Choose a proxy for the inspection. The proxy can be the landlord, property representative, tenant, or any adult associated with this tenancy. The selection of the proxy is a mutual decision between the PHA, landlord, and tenant (see proxy certification in Section IV).*

*Once the inspection is scheduled, the NSPIRE inspector uses the PHA's designated streaming web-based platform to contact the proxy. The NSPIRE inspector uses the same inspection form the PHA currently uses to record any deficiencies. If the PHA currently uses handheld devices rather than a paper form, decide on a consistent conversion process.*

### **Post-inspection**

*Inspection passes. PHAs follow its Administrative Plan/procedure, informs the tenant/landlord, and follow the process to (1) process HAP for initial inspection or (2) approves inspection within their system.*

*Inspection fails. PHAs follow its Administrative Plan/procedure, informs tenant /landlord of fail items, including any follow-ups such as a reinspection/verification or requirement for Lead-Based Paint (LBP) clearance testing.*

**IV. Considerations and Best Practices RVI Inspection Process: The purpose of this section to provide a sample best practice process for PHAs considering to RVIs. The only requirement in this**

*section is the Lead Based Paint process in item number 4. It is up to the PHA to develop its RVI inspection process. RVI procedures should ensure consistency among inspectors and the proxy inspector. Document items that fail inspection with a file photo. The general sequence of the inspection is as follows:*

- 1. Prior to the inspection commencement, verify the unit on screen is the unit scheduled to be inspected. From outside the unit, confirm the address and street name.*
- 2. Once the unit is confirmed, inspect the exterior of the unit (outside walls, roof, any exterior item inspectable including the yard) and adjoining properties.*
- 3. Inspect all interior spaces, bedrooms, common areas, and tenant-accessed areas.*
- 4. For a pre-1978 property, follow National and State LBP requirements for an HQS inspection.*
  - a. Verify that the proxy completed the [Lead based Paint Visual Assessment Training Course](#).*
  - b. Exterior: Examine all sides of the structure, including but not limited to fences and outbuildings. Visually examine paint conditions of all siding, trim, windows, porches, steps, columns, and any other painted areas.*
  - c. Interior: Review each room separately and visually examine paint conditions of walls, ceilings, steps, floors, doors, door frames, and windows, including window troughs.*
  - d. For deteriorated paint (including cracked, chipped or otherwise damaged paint), document the amount of deterioration, indicating whether the scale is greater or less than the HUD de minimis amounts (24 CFR 35.1350(d)).*
- 5. Complete the process of generating notification letters to the landlord and/or tenant to communicate inspection results.*
- 6. Schedule re-inspection/clearance test, if needed, in accordance with the PHA/LBP policy.*

***Proxy Certification.** Prior to the RVI, the PHA and impacted parties with legal possession of the unit should agree to use an RVI rather than an on-site inspection by PHA staff. This agreement is usually with the owner/landlord for an initial inspection of unoccupied units as the potential tenant may not have legal access yet. In the case of an occupied unit, the agreement is usually with the tenant or other adult household member. If an agreement cannot be reached, the PHA follows the procedures for on-site inspections.*

*Notify the approved proxy in advance that participation in the RVI will involve:*

- 1. Determination of no smell of natural gas, Methane, or other noxious gas.*
- 2. Completion of the free online [Lead based Paint Visual Assessment Training Course](#), for properties built before 1978 where a child under 6 resides or will reside (reference [www.hud.gov/program\\_offices/healthy\\_homes/enforcement/regulations](http://www.hud.gov/program_offices/healthy_homes/enforcement/regulations)).*
- 3. Streaming the RVI (not recorded) considering a legal review may be needed to address possible PII concerns.*
- 4. Fully following directions of the inspector.*
- 5. Any additional items deemed necessary by the PHA.*

***V. Post-RVI Inspection:** PHAs are encouraged to perform additional Quality Control (QC) inspections under the RVI process. RVI QC inspections are in addition to the five percent required under SEMAP indicator #5 unless SEMAP indicator #5 is waived by PIH 2020-05 and/or 2020-13, REV-1.*

### 3. NSPIRE STANDARDS:

*If the PHA is not going to continue to use HQS and is now adopting the NSPSIRE standards, they are located here:*

[https://www.hud.gov/sites/dfiles/PHH/documents/6092-N-05nspire\\_final\\_standards.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://www.hud.gov/sites/dfiles/PHH/documents/6092-N-05nspire_final_standards.pdf?utm_medium=email&utm_source=govdelivery)

The HUD NSPIRE-V forms are also located in this chapter. There are 3 forms:

The first is one which you can print and perform a hand written inspection (Checklist)

The Second one can be used by a tablet or mini computer (Fillable checklist)

The third one is an Excel Spreadsheet

# NSPIRE HCV/PBV INSPECTION CHECKLIST

PHA:	Address of Unit:		
Family Identifier:	Owner:		
Any children under 6 reside or expected to reside in the unit? (Y/N):	Owner Contact Information:		
Inspector:	Housing Type:		
Date of Inspection:	Year Constructed:		
Type of Inspection:	Number of Bedrooms:		

Summary Decision on Unit (Pass/Fail):		Health & Safety Designation	Correction Timeframe (P/F)
*Affirmative Habitability Requirement per 24 CFR 5.703(d) and NSPIRE Final Rule		LT	Life-Threatening - 24 Hours (Fail)
		S	Severe - 30 Days (Fail)
		M	Moderate - 30 Days (Fail)
		L	Low - N/A (Pass)

Area	Deficiency Description	Unit	Inside	Outside	Inspector Comments
Address and Signage	Address, signage, or building identification codes are broken, illegible, or not visible.	S	L	M	
Bathtub and Shower	Only 1 bathtub or shower is present and it is inoperable or does not drain.	M	L		
	A bathtub or shower is inoperable or does not drain and at least 1 bathtub or shower is present elsewhere that is operational.	M	L		
Cabinet and Storage	Bathtub component or shower component is damaged, inoperable, or missing such that it may limit the resident's ability to maintain personal hygiene.	L			
	Bathtub component or shower component is damaged, inoperable, or missing and it does not limit the resident's ability to maintain personal hygiene.	*M	M		
Call-For-Aid System	Bathtub or shower cannot be used in private.*	*M			
	Food storage space is not present.*	*M			
Carbon Monoxide	Storage component is damaged, inoperable, or missing.	M	L		
	System is blocked, or pull cord is higher than 6 inches off the floor.	LT	LT		
Ceiling	System does not function properly.	LT	LT		
	Carbon monoxide alarm is missing, not installed, or not installed in a proper location.*	LT			
Chimney	Carbon monoxide alarm is obstructed.	LT	LT		
	Carbon monoxide alarm does not produce an audio or visual alarm when tested.	LT	LT		
Chimney	Ceiling has an unstable surface.	M	M		
	Ceiling has a hole.	M	M		
Chimney	Ceiling component(s) is not functionally adequate.	S	S		
	A visually accessible chimney, flue, or firebox connected to a fireplace or wood-burning appliance is incomplete or damaged such that it may not safely contain fire and convey smoke and combustion gases to the exterior.	LT	LT	LT	
Chimney	Chimney exhibits signs of structural failure.			LT	

Area	Deficiency Description	Unit	Inside	Outside	Inspector Comments
Clothes Dryer Exhaust Ventilation	Electric dryer transition duct is detached or missing.	LT <input type="checkbox"/>	LT <input type="checkbox"/>		
	Gas dryer transition duct is detached or missing.	LT <input type="checkbox"/>	LT <input type="checkbox"/>		
	Electric dryer exhaust ventilation system has restricted airflow.	LT <input type="checkbox"/>	LT <input type="checkbox"/>	LT <input type="checkbox"/>	
	Dryer transition duct is constructed of unsuitable material.	LT <input type="checkbox"/>	LT <input type="checkbox"/>		
	Gas dryer exhaust ventilation system has restricted airflow.	LT <input type="checkbox"/>	LT <input type="checkbox"/>	LT <input type="checkbox"/>	
	Exterior dryer vent cover, cap, or a component thereof is missing.			L <input type="checkbox"/>	
	Cooking range, cooktop, or oven does not ignite or produce heat.	S <input type="checkbox"/>	L <input type="checkbox"/>		
	Cooking range, cooktop, or oven component is damaged or missing such that the device is unsafe for use.	M <input type="checkbox"/>	M <input type="checkbox"/>		
Cooking Appliance	Primary cooking appliance is missing.*	*M <input type="checkbox"/>			
	A microwave is the primary cooking appliance and it is damaged.	S <input type="checkbox"/>			
	A burner does not produce heat, but at least 1 other burner is present on the cooking range or cooktop and does produce heat.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Entry door will not open.	M <input type="checkbox"/>	M <input type="checkbox"/>		
Door - Entry	Entry door will not close.	S <input type="checkbox"/>	M <input type="checkbox"/>		
	Entry door self-closing mechanism is damaged, inoperable, or missing.	S <input type="checkbox"/>	M <input type="checkbox"/>		
	Hole, split, or crack that penetrates completely through entry door.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Entry door is missing.	LT <input type="checkbox"/>	S <input type="checkbox"/>		
	Entry door surface is delaminated or separated.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Entry door frame, threshold, or trim is damaged or missing.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Entry door seal, gasket, or stripping is damaged, inoperable, or missing.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Entry door component is damaged, inoperable, or missing and it does not limit the door's ability to provide privacy or protection from weather or infestation.	L <input type="checkbox"/>	L <input type="checkbox"/>		
	Entry door cannot be secured.	S <input type="checkbox"/>	M <input type="checkbox"/>		
	Fire labeled door does not open.	S <input type="checkbox"/>	S <input type="checkbox"/>		
Door - Fire	Fire labeled door does not close and latch or the self-closing hardware is damaged or missing such that the door does not self-close and latch.	S <input type="checkbox"/>	S <input type="checkbox"/>		
	Fire labeled door assembly has a hole of any size or is damaged such that its integrity may be compromised.	S <input type="checkbox"/>	S <input type="checkbox"/>		
	Fire labeled door seal or gasket is damaged or missing.	S <input type="checkbox"/>	S <input type="checkbox"/>		
	An object is present that may prevent the fire labeled door from closing and latching or self-closing and latching.	S <input type="checkbox"/>	S <input type="checkbox"/>		
Door - General	Fire labeled door cannot be secured.	S <input type="checkbox"/>	M <input type="checkbox"/>		
	Fire labeled door is missing.	LT <input type="checkbox"/>	LT <input type="checkbox"/>		
	A passage door does not open.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	A passage door component is damaged, inoperable, or missing and the door is not functionally adequate.	L <input type="checkbox"/>	L <input type="checkbox"/>		
	A door that is not intended to permit access between rooms has a damaged, inoperable, or missing exterior door component is damaged, inoperable, or missing.	L <input type="checkbox"/>		M <input type="checkbox"/>	

Area	Deficiency Description	Unit	Inside	Outside	Inspector Comments
Drain	Drain is fully blocked.	M	M	M	
Egress	Obstructed means of egress.	LT	LT	LT	
	Sleeping room is located on the 3rd floor or below and has an obstructed rescue opening.	LT			
	Fire escape access is obstructed.	LT			
Electrical - Conductor, Outlet, and Switch	Outlet or switch is damaged.	LT	LT	LT	
	Testing indicates a three-pronged outlet is not properly wired or grounded.	S	S	S	
	Outlet does not have visible damage and testing indicates it is not energized.	S	S	S	
	Exposed electrical conductor.	LT	LT	LT	
Electrical - GFCI/AFCI	Water is currently in contact with an electrical conductor.	LT	LT		
	GFCI outlet or GFCI breaker is not visibly damaged and the test or reset button is inoperable.	S	S	S	
	AFCI outlet or AFCI breaker is not visibly damaged and the test or reset button is inoperable.	S	S	S	
	An unprotected outlet is present within six feet of a water source.*	*S	*S	*S	
Electrical - Service Panel	Electrical service panel is not readily accessible.	M	M	M	
	The overcurrent protection device is damaged.	LT	LT	LT	
Elevator	The overcurrent protection device is contaminated.	S	S	S	
	Elevator is inoperable.		M		
	Elevator door does not fully open and close.		M		
	Elevator cab is not level with the floor.		M		
Exit Sign	Safety edge device has malfunctioned or is inoperable.		M		
	Exit sign is damaged, missing, obstructed, or not adequately illuminated.		LT	LT	
Fence and Gate	Fence component is missing.			M	
	Gate does not open, close, latch, or lock.			M	
Fire Escape	Fence demonstrates signs of collapse.			M	
	Fire escape component is damaged or missing.			LT	
Fire Extinguisher	Fire extinguisher pressure gauge reads over or under-charged.	LT	LT	LT	
	Fire extinguisher service tag is missing, illegible, or expired.	LT	LT	LT	
	Fire extinguisher is damaged or missing.	LT	LT	LT	
Flammable and Combustible Item	Flammable or combustible item is on or within 3 feet of an appliance that provides heat for thermal comfort or a fuel-burning water heater.	LT	LT	LT	
	Improperly stored chemicals.				
Floor	Floor substrate is exposed.	M	M		
	Floor component(s) is not functionally adequate.	M	M		
Food Preparation	Food preparation area is not present.*	*M			
	Food preparation area is damaged or is not functionally adequate.	M	M		



Area	Deficiency Description	Unit	Inside	Outside	Inspector Comments
Foundation	Foundation is cracked.	M <input type="checkbox"/>	M <input type="checkbox"/>	M <input type="checkbox"/>	
	Foundation has exposed rebar or foundation is spalling, flaking, or chipping.	M <input type="checkbox"/>	M <input type="checkbox"/>	M <input type="checkbox"/>	
	Foundation is infiltrated by water.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Foundation support post, column, beam, or girder is damaged.	M <input type="checkbox"/>	M <input type="checkbox"/>	M <input type="checkbox"/>	
	Foundation vent cover is missing or damaged.			M <input type="checkbox"/>	
Garage Door	Garage door has a hole.	M <input type="checkbox"/>	M <input type="checkbox"/>	M <input type="checkbox"/>	
	Garage door does not open, close, or remain open or closed.	M <input type="checkbox"/>	M <input type="checkbox"/>	M <input type="checkbox"/>	
Guardrail	Grab bar is not secure.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Guardrail is missing or not installed.*	*LT <input type="checkbox"/>	*LT <input type="checkbox"/>	*LT <input type="checkbox"/>	
Handrail	Guardrail is not functionally adequate.	LT <input type="checkbox"/>	LT <input type="checkbox"/>	LT <input type="checkbox"/>	
	Handrail is missing.	M <input type="checkbox"/>	M <input type="checkbox"/>	M <input type="checkbox"/>	
	Handrail is not secure.	M <input type="checkbox"/>	M <input type="checkbox"/>	M <input type="checkbox"/>	
	Handrail is not functionally adequate.	M <input type="checkbox"/>	M <input type="checkbox"/>	M <input type="checkbox"/>	
	Handrail is not installed where required.		L <input type="checkbox"/>	L <input type="checkbox"/>	
HVAC	The inspection date is on or between October 1 and March 31 and the permanently installed heating source is not working or the permanently installed heating source is working and the interior temperature is below 64 degrees Fahrenheit.*	*LT <input type="checkbox"/>			
	The inspection date is on or between October 1 and March 31 and the permanently installed heating source is working and the interior temperature is 64 to 67.9 degrees Fahrenheit.*	*S <input type="checkbox"/>			
	Air conditioning system or device is not operational.	M <input type="checkbox"/>	L <input type="checkbox"/>		
	Unvented space heater that burns gas, oil, or kerosene is present.*	*LT <input type="checkbox"/>	*LT <input type="checkbox"/>		
	Combustion chamber cover or gas shutoff valve is missing from a fuel burning heating appliance.	LT <input type="checkbox"/>	LT <input type="checkbox"/>		
	Heating system or device safety shield is damaged or missing.	S <input type="checkbox"/>	S <input type="checkbox"/>		
	The inspection date is on or between April 1 and September 30 and a permanently installed heating source is damaged, inoperable, missing, or not installed.*	*M <input type="checkbox"/>	*M <input type="checkbox"/>		
	Fuel burning heating system or device exhaust vent is misaligned, blocked, disconnected, improperly connected, damaged, or missing.	LT <input type="checkbox"/>	LT <input type="checkbox"/>	LT <input type="checkbox"/>	
	The inspection date is on or between October 1 and March 31 and the permanently installed heating source is inoperable.		M <input type="checkbox"/>		
	Evidence of cockroaches.	M <input type="checkbox"/>	M <input type="checkbox"/>		
Infestation	Extensive cockroach infestation.	S <input type="checkbox"/>	M <input type="checkbox"/>		
	Evidence of bedbugs.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Extensive bedbug infestation.	S <input type="checkbox"/>	M <input type="checkbox"/>		
	Evidence of mice.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Extensive mouse infestation.	S <input type="checkbox"/>	M <input type="checkbox"/>		
	Evidence of rats.	M <input type="checkbox"/>	M <input type="checkbox"/>	M <input type="checkbox"/>	
	Extensive rat infestation.	S <input type="checkbox"/>	S <input type="checkbox"/>		
	Evidence of other pests.	M <input type="checkbox"/>	M <input type="checkbox"/>		

Area	Deficiency Description	Unit	Inside	Outside	Inspector Comments
Leak - Gas/Oil	Natural gas, propane, or oil leak.	LT	LT	LT	
	Blocked sewage system.	S	S	S	
Leak - Sewage	Leak in sewage system.	S	S	S	
	Cap to the cleanout or pump cover is detached or missing.	M	M	M	
Leak - Water	Cleanout cap or riser is damaged.	M	M	M	
	Environmental water intrusion.	M	M	M	
Lighting - Auxiliary	Plumbing leak.	M	M	L	
	Fluid is leaking from the sprinkler assembly.	M	M	L	
Lighting - Exterior	Auxiliary lighting is damaged, missing, or fails to illuminate when tested.		S	S	
	A permanently installed light fixture is damaged, inoperable, missing, or not secure.			M	
Lighting - Interior	A permanently installed light fixture is inoperable.	M	M		
	A permanently installed light fixture is not secure.	M	M		
Litter	At least one (1) permanently installed light fixture is not present in the kitchen and bathroom.*	*M	*M		
	Litter is accumulated in an undesignated area.		M	L	
Minimum Electrical and Lighting	At least two (2) working outlets are not present within each habitable room. OR At least one (1) working outlet and one (1) permanently installed light fixture is not present within each habitable room.*	*M			
	Presence of mold-like substance at moderate levels is observed visually.	M	L		
Mold-Like Substance	Presence of mold-like substance at high levels is observed visually.	S	M		
	Presence of mold-like substance at extremely high levels is observed visually.	LT	S		
Parking Lot	Elevated moisture level.	M	L		
	Parking lot has any one pothole that is 4 inches deep and 1 square foot or greater.			M	
Potential Lead-Based Paint Hazards - Visual Assessment	Parking lot has ponding.			M	
	Paint in a Unit or Inside the target property is deteriorated – below the level required for lead-safe work practices by a lead-certified firm or for passing clearance.	M	M		
Private Roads and Driveways	Paint in a Unit or Inside the target property is deteriorated – above the level required for lead-safe work practices by a lead-certified firm and passing clearance.	S	S		
	Paint Outside on a target property is deteriorated – below the level required for lead-safe work practices by a lead-certified firm or for passing clearance.			M	
Refrigerator	Paint Outside on a target property is deteriorated – above the level required for lead-safe work practices by a lead-certified firm and passing clearance.			S	
	Road or driveway access to the property is blocked or impassable for vehicles.			S	
Refrigerator	Road or driveway has any one pothole that is 4 inches deep and 1 square foot or greater.			M	
	Refrigerator is inoperable such that it may be unable to safely and adequately store food.	M	M		
Refrigerator	Refrigerator component is damaged such that it impacts functionality.	M	M		
	Refrigerator is missing.*	*M			

Area	Deficiency Description	Unit	Inside	Outside	Inspector Comments
Retaining Wall	Retaining wall is leaning away from the fill side.			M	
	Retaining wall is partially or completely collapsed.			M	
Roof Assembly	Restricted flow of water from a roof drain, gutter, or downspout.			M	
	Gutter component is damaged, missing, or unfixed.			M	
	Roof surface has standing water.			M	
	Substrate is exposed.			M	
	Roof assembly has a hole.			M	
Sharp Edges	Roof assembly is damaged.			M	
	Roof assembly is damaged.			M	
Sidewalk, Walkway, Ramp	A sharp edge that can result in a cut or puncture hazard is present.	S	S	S	
	Sidewalk, walkway, or ramp is blocked or impassable.			M	
	Sidewalk, walkway, or ramp is not functionally adequate.			M	
	Sink or sink component is damaged or missing and the sink is not functionally adequate.	M	L		
Sink	Water is directed outside of the basin.	L	L		
	Sink is not draining.	M	M		
	Sink is improperly installed, pulling away from the wall, leaning, or there are gaps between the sink and wall.	M	M		
	Sink component is damaged or missing and the sink is functionally adequate.	L	L		
	Cannot activate or deactivate hot and cold water.*	*M	M		
	Sink is missing or not installed within the primary kitchen.*	*M			
	Water runoff is unable to flow through the site drainage system.			L	
Site Drainage	Erosion is present.			L	
	Grate is not secure or does not cover the site drainage system's collection point.			M	
Smoke Alarm	Smoke alarm is not installed where required.*	*LT	*LT		
	Smoke alarm is obstructed.	LT	LT		
	Smoke alarm does not produce an audio or visual alarm when tested.	LT	LT		
Sprinkler Assembly	Sprinkler head assembly is encased or obstructed by an item or object that is within 18 inches of the sprinkler head.	LT	LT	LT	
	Sprinkler assembly component is damaged, inoperable, or missing and it is detrimental to performance.	LT	LT		
	Sprinkler assembly has evidence of corrosion.	LT	LT	LT	
	Sprinkler assembly has evidence of foreign material that is detrimental to performance.	LT	LT	LT	
Stairs	Tread is missing or damaged.	M	M	M	
	Stringer is damaged.	M	M	M	
Steps and Stairs	Step or stair is not functionally adequate.			M	
	Structural system exhibits signs of serious failure.	LT	LT	LT	

Area	Deficiency Description	Unit	Inside	Outside	Inspector Comments
Toilet	Only 1 toilet was installed, and it is missing.	LT <input type="checkbox"/>	M <input type="checkbox"/>		
	A toilet is missing and at least 1 toilet is installed elsewhere that is operational.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Only 1 toilet was installed, and it is damaged or inoperable.	S <input type="checkbox"/>	M <input type="checkbox"/>		
	A toilet is damaged or inoperable and at least 1 toilet is installed elsewhere that is operational.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Toilet component is damaged, inoperable, or missing such that it may limit the resident's ability to safely discharge human waste.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Toilet is not secured at the base.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Toilet component is damaged, inoperable, or missing and it does not limit the resident's ability to discharge human waste.	L <input type="checkbox"/>	L <input type="checkbox"/>		
	Toilet cannot be used in private.*	*M <input type="checkbox"/>	M <input type="checkbox"/>		
	Chute door does not open or self-close and latch.		M <input type="checkbox"/>		
	Chute is clogged.		M <input type="checkbox"/>		
Trip Hazard	Trip hazard on walking surface.	M <input type="checkbox"/>	M <input type="checkbox"/>	M <input type="checkbox"/>	
Ventilation	Exhaust system does not respond to the control switch.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Exhaust system has restricted airflow.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Exhaust system component is damaged or missing.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Bathroom does not have proper ventilation or dehumidification.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Exterior wall covering has missing sections of at least 1 square foot per wall.			M <input type="checkbox"/>	
Wall - Exterior	Exterior wall has peeling paint of 10 square feet or more.			M <input type="checkbox"/>	
	Exterior wall component(s) is not functionally adequate.			M <input type="checkbox"/>	
Wall - Interior	Interior wall has a loose or detached surface covering.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Interior wall component(s) is not functionally adequate.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Interior wall has a hole that is greater than 2 inches in diameter or there is an accumulation of holes that are cumulatively greater than 6 inches by 6 inches.	M <input type="checkbox"/>	M <input type="checkbox"/>		
	Temperature pressure relief (TPR) valve has an active leak or is obstructed or relief valve discharge piping is damaged, capped, has an upward slope, or is constructed of unsuitable material.	S <input type="checkbox"/>	S <input type="checkbox"/>	S <input type="checkbox"/>	
	No hot water.	S <input type="checkbox"/>	L <input type="checkbox"/>		
Water Heater	The relief valve discharge piping is missing or terminates greater than 6 inches or less than 2 inches from waste receptor flood-level.	M <input type="checkbox"/>	M <input type="checkbox"/>	M <input type="checkbox"/>	
	Chimney or flue piping is blocked, misaligned, or missing.	LT <input type="checkbox"/>	LT <input type="checkbox"/>	LT <input type="checkbox"/>	
	Gas shutoff valve is damaged, missing, or not installed.	LT <input type="checkbox"/>	LT <input type="checkbox"/>	LT <input type="checkbox"/>	
Window	Window will not open or stay open.	M <input type="checkbox"/>	L <input type="checkbox"/>		
	Window cannot be secured.	M <input type="checkbox"/>	L <input type="checkbox"/>		
	Window will not close.	S <input type="checkbox"/>	M <input type="checkbox"/>		
	Window component is damaged or missing and the window is not functionally adequate.	M <input type="checkbox"/>	M <input type="checkbox"/>		

Note: This checklist is not a standards form and is not required for use. The form or its data should not be submitted to HUD, and will not be collected or maintained by HUD. No PII data should be collected or submitted, nor will it be collected. The housing authority or owner is responsible for compliance with the HUD NSPIRE Standards per the NSPIRE Final Rule (88 FR 30442) and accompanying Federal Register Notices (88 FR 40832, 88 FR 66882).

## RENT AND HOUSING ASSISTANCE PAYMENT

### *How to calculate housing assistance payment.*

*(a) Use of payment standard. A payment standard is used to calculate the monthly housing assistance payment for a family. The "payment standard" is the maximum monthly subsidy payment.*

*(b) Amount of monthly housing assistance payment. The PHA shall pay a monthly housing assistance payment on behalf of the family that is equal to the lower of:*

- (1) The payment standard for the family minus the total tenant payment; or*
- (2) The gross rent minus the total tenant payment.*

*(c) Payment standard for family.*

*(1) The payment standard for the family is the lower of:*

- (i) The payment standard amount for the family unit size; or*
- (ii) The payment standard amount for the size of the dwelling unit rented by the family.*

*(2) If the PHA has established a separate payment standard amount for a designated part of an FMR area in accordance with § 982.503 (including an exception payment standard amount as determined in accordance with § 982.503(b)(2) and § 982.503(c)), and the dwelling unit is located in such designated part, the PHA must use the appropriate payment standard amount for such designated part to calculate the payment standard for the family. The payment standard for the family shall be calculated in accordance with this paragraph and paragraph (c)(1) of this section.*

*(3) Decrease in the payment standard amount during the HAP contract term. If the amount on the payment standard schedule is decreased during the term of the HAP contract, the PHA is not required to reduce the payment standard amount used to calculate the subsidy for the families under HAP contract for as long as the HAP contract remains in effect.*

*(i) If the PHA chooses to reduce the payment standard for the families currently under HAP contract during the HAP contract term in accordance with their administrative plan, the initial reduction to the payment standard amount used to calculate the monthly housing assistance payment for the family may not be applied any earlier than the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount.*

*(ii) The PHA may choose to reduce the payment standard amount for families that remain under HAP contract to the current payment standard amount in effect on the PHA voucher payment standard schedule, or may reduce the payment standard amount to an amount that*

*is higher than the normally applicable payment standard amount on the PHA voucher payment standard schedule. The PHA may further reduce the payment standard amount for the families during the term of the HAP contract, provided the subsequent reductions continue to result in a payment standard amount that meets or exceeds the normally applicable payment standard amount on the PHA voucher payment standard schedule.*

*(iii) The PHA must provide the family with at least 12 months' notice that the payment standard is being reduced during the term of the HAP contract before the effective date of the change.*

*(iv) The PHA shall administer decreases in the payment standard amount during the term of the HAP contract in accordance with the PHA policy as described in the PHA administrative plan. The PHA may establish different policies for designated areas within their jurisdiction (e.g., for different zip code areas), but the PHA administrative policy on decreases to payment standards during the term of the HAP contract applies to all families under HAP contract at the time of the effective date of decrease in the payment standard within that designated area. The PHA may not limit or otherwise establish different protections or policies for certain families under HAP contract.*

*(4) Increase in the payment standard amount during the HAP contract term. If the payment standard amount is increased during the term of the HAP contract, the increased payment standard amount shall be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard amount.*

*(5) Change in family unit size during the HAP contract term. Irrespective of any increase or decrease in the payment standard amount, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard amount for the family beginning at the family's first regular reexamination following the change in family unit size.*

*(d) PHA approval of higher payment standard for the family as a reasonable accommodation. If the family includes a person with disabilities and requires a payment standard above the basic range, as a reasonable accommodation for such person, in accordance with [part 8 of this title](#), the PHA may establish a payment standard for the family of not more than 120 percent of the FMR. A PHA may establish a payment standard greater than 120 percent of the FMR by submitting a request to HUD.*

### ***Negotiating rent to owner.***

*The owner and the family negotiate the rent to owner. At the family's request, the PHA must help the family negotiate the rent to owner.*

### ***Maximum family share at initial occupancy.***

*At the time the PHA approves a tenancy for initial occupancy of a dwelling unit by a family with tenant-based assistance under the program, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share must not exceed 40 percent of the family's adjusted monthly income. The determination of adjusted monthly income must be based on verification information received by the PHA no earlier than 60 days before the PHA issues a voucher to the family.*

***Rent to owner: Effect of rent control.***

*In addition to the rent reasonableness limit under this subpart, the amount of rent to owner also may be subject to rent control limits under State or local law.*

***Other fees and charges***

*(a) The cost of meals or supportive services may not be included in the rent to owner, and the value of meals or supportive services may not be included in the calculation of reasonable rent.*

*(b) The lease may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.*

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

***Selecting the Correct Payment Standard for a Family***

- A. *For the housing choice voucher tenancy, the payment standard for a family is the lower of:*
  - 1. *The payment standard for the family unit size; or*
  - 2. *The payment standard for the unit size rented by the family.*
- B. *If the unit rented by a family is located in an exception rent area, the Housing Authority will use the appropriate payment standard for the exception rent area.*
- C. *During the HAP contract term for a unit, the amount of the payment standard for a family is the higher of:*
  - 1. *The initial payment standard (at the beginning of the lease term) minus any amount by which the initial rent to owner exceeds the current rent to owner; or*
  - 2. *The payment standard on the effective date of the HAP contract. Families who have been issued a voucher where the search time may extend past the effective date of a new payment standard shall be informed of both the old*

*and new payment standards once the amount of the new payment standard has been determined.*

- D. At the next annual reexamination following a change in family size or composition during the HAP contract term and for any reexamination thereafter, paragraph C above does not apply.*
- E. If there is a change in family unit size resulting from a change in family size or composition, the new family unit size will be considered when determining the payment standard at the next annual reexamination.*

#### **Area Exception Rents**

*In order to help families find housing outside areas of high poverty or when housing choice voucher holders are having trouble finding housing for lease under the program, the Housing Authority may establish an exception payment standard up to and including 110% of a HUD-approved zip code FMR on its own simply by notifying HUD at [SAFMRs@hud.gov](mailto:SAFMRs@hud.gov). If the PHA exercises this option it shall apply to both the tenant-based and Project-Based programs.*

*When an exception payment standard rent has been approved and the FMR increases, the exception rent remains unchanged until such time as the Housing Authority requests and HUD approves a higher exception payment standard rent. If the FMR decreases, the exception payment standard rent authority automatically expires.*

#### **ASSISTANCE AND RENT FORMULAS**

##### **A. Total Tenant Payment**

*The total tenant payment is equal to the highest of:*

- 1. 10% of the family's monthly income*
- 2. 30% of the family's adjusted monthly income*
- 3. The Minimum rent*
- 4. 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.*



*Plus any rent above the payment standard.*

B. *Minimum Rent.*

The PHA has set the minimum rent as \$ **50.00**. However, if the family requests a hardship exemption, the PHA will suspend the minimum rent for the family beginning the month following the family's hardship request. *The suspension will continue until the Housing Authority can determine whether hardship exists and whether the hardship is of a temporary or long-term nature. During suspension, the family will not be required to pay a minimum rent and the Housing Assistance Payment will be increased accordingly.*

1. *A hardship exists in the following circumstances:*
  - a. *When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State or local assistance program including a family that includes a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996;*
  - b. *When the family would be evicted because it is unable to pay the minimum rent;*
  - c. *When the income of the family has decreased because of changed circumstances, including loss of employment; and*
  - d. *When a death has occurred in the family.*
2. *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 to the Housing Authority for the time of suspension.*
3. *Temporary hardship. If the Housing Authority determines that there is a qualifying hardship but that it is of a temporary nature, the minimum rent will not be imposed for a period of 90 calendar days from the month following the date of the family's request. 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 reasonable repayment agreement for any minimum rent back payment paid by the Housing Authority on the family's behalf during the period of suspension.*

4. *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.*
5. *Appeals. The family may use the informal hearing procedure to appeal the Housing Authority's determination regarding the hardship. No escrow deposit will be required in order to access the informal hearing procedures.*

C. *Section 8 Preservation Vouchers*

1. *Payment Standard*

- a. *The payment standard is the lower of:*
  - i. *The payment standard amount for the appropriate family unit size; or*
  - ii. *The payment standard amount for the size of the dwelling unit actually rented by the family.*
- b. *If the dwelling unit is located in an exception area, the PHA will use the appropriate payment standard for the exception area.*
- c. *During the HAP contract term, the payment standard for the family is the higher of :*
  - i. *The initial payment standard (at the beginning of the HAP contract term), as determined in accordance with paragraph (1)(a) or (1)(b) of this section, minus any amount by which the initial rent to the owner exceeds the current rent to the owner; or*
  - ii. *The payment standard as determined in accordance with paragraph (1)(a) or (1)(b) of this section, as determined at the most recent regular reexamination of family income and composition effective after the beginning of the HAP contract term.*
- d. *At the next regular reexamination following a change in family composition that causes a change in family unit size during the HAP contract term, and for any examination thereafter during the term:*
  - i. *Paragraph (c)(i) of this section does not apply; and*
  - ii. *The new family unit size must be used to determine the payment standard.*

2. *The PHA will pay a monthly housing assistance payment on behalf of the family that equals the lesser of:*
  - a. *The payment standard minus the total tenant payment; or*
  - b. *The gross rent minus the total tenant payment.*

*D. Manufactured Home Space Rental: Section 8 Vouchers*

1. *The payment standard for a participant renting a manufactured home space is the published FMR.*
2. *The space rent is the sum of the following as determined by the Housing Authority:*
  - a. *Rent to the owner for the manufactured home space;*
  - b. *Owner maintenance and management charges for the space;*
  - c. *Payments made to amortize the cost of purchasing the manufactured home, including taxes and insurance (any increase due to refinancing after purchase is not included); and*
  - d. *Utility allowance for participant paid utilities.*
3. *The participant pays the rent to owner less the HAP.*
4. *HAP equals the lesser of:*
  - a. *The payment standard minus the total tenant payment; or*
  - b. *The rent paid for rental of the real property on which the manufactured home owned by the family is located.*

*E. Rent for Families under the Noncitizen Rule*

*A mixed family will receive full continuation of assistance if all of the following conditions are met:*

1. *The family was receiving assistance on June 19, 1995;*
2. *The family was granted continuation of assistance before November 29, 1996;*
3. *The family's head or spouse has eligible immigration status; and*

4. *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:*

1. *Find the prorated housing assistance payment (HAP) by dividing the HAP by the total number of family members, and then multiplying the result by the number of eligible family members.*
2. *Obtain the prorated family share by subtracting the prorated HAP from the gross rent (contract rent plus utility allowance).*
3. *The prorated resident rent equals the prorated family share minus the full utility allowance.*

## **Rent to owner: Reasonable rent.**

### ***(a) PHA determination.***

*(1) Except as provided in [paragraph \(c\)](#) of this section, the PHA may not approve a lease until the PHA determines that the initial rent to owner is a reasonable rent.*

*(2) The PHA must redetermine the reasonable rent:*

*(i) Before any increase in the rent to owner;*

*(ii) If there is a 10 percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect 1 year before the contract anniversary.*

*(iii) If directed by HUD.*

*(3) The PHA may also redetermine the reasonable rent at any other time.*

*(4) At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or redetermined by the PHA.*

***(b) Comparability.*** *The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider:*

*(1) The location, quality, size, unit type, and age of the contract unit; and*

*(2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.*

***(c) Units assisted by low-income housing tax credits or assistance under HUD's HOME Investment Partnerships (HOME) program.***

*(1) **General.** For a unit receiving low-income housing tax credits (LIHTCs) pursuant to section 42 of the Internal Revenue Code of 1986 or receiving assistance under HUD's HOME Program (for which the regulations are found in [24 CFR part 92](#)), a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.*

*(2) **LIHTC.** If the rent requested by the owner exceeds the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations and the rent shall not exceed the lesser of the:*

*(i) Reasonable rent as determined pursuant to a rent comparability study; and*

(ii) *The payment standard established by the PHA for the unit size involved.*

(3) **HOME Program.** *[Reserved]*

(d) **Owner certification of rents charged for other units.** *By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.*

## UTILITY ALLOWANCE

The Housing Authority maintains a utility allowance schedule for all tenant-paid utilities (except telephone and cable television), for cost of tenant-supplied refrigerators and ranges, and for other tenant-paid housing services (e.g., trash collection (disposal of waste and refuse)).

### Utility allowance schedule.

#### *(a) Maintaining schedule.*

*(1) The PHA must maintain a utility allowance schedule for all tenant-paid utilities (except telephone), for cost of tenant-supplied refrigerators and ranges, and for other tenant-paid housing services (e.g., trash collection (disposal of waste and refuse)).*

*(2) The PHA must give HUD a copy of the utility allowance schedule. At HUD's request, the PHA also must provide any information or procedures used in preparation of the schedule.*

#### *(b) How allowances are determined.*

*(1) The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole and current utility rates.*

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

*(ii) In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection (disposal of waste and refuse); other electric; refrigerator (cost of tenant-supplied refrigerator); range (cost of tenant-supplied range); and other specified housing services. The PHA must provide a utility allowance for tenant-paid air-conditioning costs if the majority of housing units in the market provide centrally air-conditioned units or there is appropriate wiring for tenant-installed air conditioners.*

*(3) The cost of each utility and housing service category must be stated separately. For each of these categories, the utility allowance schedule must take into consideration unit size (by number of bedrooms), and unit types (e.g., apartment, row-house, town house, single-family detached, and manufactured housing) that are typical in the community.*

*(4) The utility allowance schedule must be prepared and submitted in accordance with HUD requirements on the form prescribed by HUD.*

***(c) Revisions of utility allowance schedule.***

*(1) A PHA must review its schedule of utility allowances each year and must revise its allowance for a utility category if there has been a change of 10 percent or more in the utility rate since the last time the utility allowance schedule was revised. The PHA must maintain information supporting its annual review of utility allowances and any revisions made in its utility allowance schedule.*

*(2) At HUD's direction, the PHA must revise the utility allowance schedule to correct any errors, or as necessary to update the schedule.*

*(d) Use of utility allowance schedule. The PHA must use the appropriate utility allowance for the lesser of the size of dwelling unit actually leased by the family or the family unit size as determined under the PHA subsidy standards. In cases where the unit size leased exceeds the family unit size as determined under the PHA subsidy standards as a result of a reasonable accommodation, the PHA must use the appropriate utility allowance for the size of the dwelling unit actually leased by the family.*

*(e) Higher utility allowance as reasonable accommodation for a person with disabilities. On request from a family that includes a person with disabilities, the PHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation in accordance with [24 CFR part 8](#) to make the program accessible to and usable by the family member with a disability.*

*The utility allowance will be subtracted from the family's share to determine the amount of the Tenant Rent. The Tenant Rent is the amount the family owes each month to the owner. 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 participant. Any savings resulting from utility costs below the amount of the allowance belong to the participant. [In the alternative you can change this paragraph to provide for you paying the utility allowance directly to the utility companies as long as you notify the family of the amount paid to the utility supplier]*



**1. Housing assistance payments contract.**

(a)

(1) *The HAP contract must be in the form required by HUD.*

(2) *The term of the HAP contract is the same as the term of the lease.*

(b)

(1) *The amount of the monthly housing assistance payment by the PHA to the owner is determined by the PHA in accordance with HUD regulations and other requirements. The amount of the housing assistance payment is subject to change during the HAP contract term.*

(2) *The monthly housing assistance payment by the PHA is credited toward the monthly rent to owner under the family's lease.*

(3) *The total of rent paid by the tenant plus the PHA housing assistance payment to the owner may not be more than the rent to owner. The owner must immediately return any excess payment to the PHA.*

(4)

(i) *The part of the rent to owner which is paid by the tenant may not be more than:*

(A) *The rent to owner; minus*

(B) *The PHA housing assistance payment to the owner.*

(ii) *The owner may not demand or accept any rent payment from the tenant in excess of this maximum and must immediately return any excess rent payment to the tenant.*

(iii) *The family is not responsible for payment of the portion of rent to owner covered by the housing assistance payment under the HAP contract between the owner and the PHA. See § 982.310(b) which states:*

**Owner termination of tenancy.**

(a) **Grounds.** *During the term of the lease, the owner may not terminate the tenancy except on the following grounds:*

(1) *Serious violation (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violation of the terms and conditions of the lease;*

*(2) Violation of federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises; or*

*(3) Other good cause.*

***(b) Nonpayment by PHA: Not grounds for termination of tenancy.***

*(1) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract between the owner and the PHA.*

*(2) The PHA failure to pay the housing assistance payment to the owner is not a violation of the lease between the tenant and the owner. During the term of the lease the owner may not terminate the tenancy of the family for nonpayment of the PHA housing assistance payment.*

***(c) Criminal activity -***

*(1) Evicting drug criminals due to drug crime on or near the premises. The lease must provide that drug-related criminal activity engaged in, on or near the premises by any tenant, household member, or guest, or such activity engaged in on the premises by any other person under the tenant's control, is grounds for the owner to terminate tenancy. In addition, the lease must provide that the owner may evict a family when the owner determines that a household member is illegally using a drug or when the owner 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.*

***(2) Evicting other criminals.***

*(i) Threat to other residents. The lease must provide that the owner may terminate tenancy for any of the following types of criminal activity by a covered person:*

*(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises);*

*(B) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or*

*(C) Any violent criminal activity on or near the premises by a tenant, household member, or guest, or any such activity on the premises by any other person under the tenant's control.*

*(ii) Fugitive felon or parole violator. The lease must provide that the owner may terminate the tenancy if a tenant is:*

*(A) 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*

*(B) Violating a condition of probation or parole imposed under Federal or State law.*

*(3) Evidence of criminal activity. The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person in accordance with this section if the owner 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. (See part 5, subpart J, of this title for provisions concerning access to criminal records.)*

***(d) Other good cause.***

*(1) "Other good cause" for termination of tenancy by the owner may include, but is not limited to, any of the following examples:*

*(i) Failure by the family to accept the offer of a new lease or revision;*

*(ii) A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises;*

*(iii) The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or*

*(iv) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental).*

*(2) During the initial lease term, the owner may not terminate the tenancy for "other good cause", unless the owner is terminating the tenancy because of something the family did or failed to do. For example, during this period, the owner may not terminate the tenancy for "other good cause" based on any of the following grounds: failure by the family to accept the offer of a new lease or revision; the owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or a business or economic reason for termination of the tenancy (see [paragraph \(d\)\(1\)\(iv\)](#) of this section).*

***(e) Owner notice -***

***(1) Notice of grounds.***

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

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

**(2) Eviction notice.**

(i) *Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action.*

(ii) *The owner must give the PHA a copy of any owner eviction notice to the tenant.*

(f) **Eviction by court action.** *The owner may only evict the tenant from the unit by instituting a court action.*

(g) **Regulations not applicable, 24 CFR part 247** *(concerning evictions from certain subsidized and HUD-owned projects) does not apply to a tenancy assisted under this part 982.*

**(h) Termination of tenancy decisions -**

(1) **General.** *If the law and regulation permit the owner to take an action but do not require action to be taken, the owner may take or not take the action in accordance with the owner's standards for eviction. The owner may consider all of the circumstances relevant to a particular eviction case, such as:*

(i) *The seriousness of the offending action;*

(ii) *The effect on the community of denial or termination or the failure of the owner to take such action;*

(iii) *The extent of participation by the leaseholder in the offending action;*

(iv) *The effect of denial of admission or termination of tenancy on household members not involved in the offending activity;*

(v) *The demand for assisted housing by families who will adhere to lease responsibilities;*

(vi) *The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;*

(vii) *The effect of the owner's action on the integrity of the program.*

(2) **Exclusion of culpable household member.** *The owner 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.*

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

*(4) **Nondiscrimination limitation and protection for victims of domestic violence, dating violence, sexual assault, or stalking.** The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions of 24 CFR 5.105, and with the provisions for protection of victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart I (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).*

*(5)*

*(i) The PHA must pay the housing assistance payment promptly when due to the owner in accordance with the HAP contract.*

*(ii)*

*(A) The HAP contract shall provide for penalties against the PHA for late payment of housing assistance payments due to the owner if all the following circumstances apply:*

*(1) Such penalties are in accordance with generally accepted practices and law, as applicable in the local housing market, governing penalties for late payment of rent by a tenant;*

*(2) It is the owner's practice to charge such penalties for assisted and unassisted tenants; and*

*(3) The owner also charges such penalties against the tenant for late payment of family rent to owner.*

*(B) The PHA is not obligated to pay any late payment penalty if HUD determines that late payment by the PHA is due to factors beyond the PHA's control. The PHA may add HAP contract provisions which define when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner).*

*(iii) The PHA may only use the following sources to pay a late payment penalty from program receipts under the consolidated ACC: administrative fee income for the program; or the administrative fee reserve for the program. The PHA may not use other program receipts for this purpose.*

**Owner responsibilities.**

(a) *The owner is responsible for performing all of the owner's obligations under the HAP contract and the lease.*

(b) *The owner is responsible for:*

(1) *Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit. The fact that an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking is not an appropriate basis for denial of tenancy if the applicant otherwise qualifies for tenancy.*

(2) *Maintaining the unit in accordance with HQS, including performance of ordinary and extraordinary maintenance. For provisions on family maintenance responsibilities, see § 982.404(a)(4).*

(3) *Complying with equal opportunity requirements.*

(4) *Preparing and furnishing to the PHA information required under the HAP contract.*

(5) *Collecting from the family:*

(i) *Any security deposit.*

(ii) *The tenant contribution (the part of rent to owner not covered by the housing assistance payment).*

(iii) *Any charges for unit damage by the family.*

(6) *Enforcing tenant obligations under the lease.*

(7) *Paying for utilities and services (unless paid by the family under the lease).*

(c) *For provisions on modifications to a dwelling unit occupied or to be occupied by a disabled person, see 24 CFR 100.203.*

**Owner breach of contract.**

(a) *Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner:*

(1) *If the owner has violated any obligation under the HAP contract for the dwelling unit, including the owner's obligation to maintain the unit in accordance with the HQS.*

(2) If the owner has violated any obligation under any other HAP contract under Section 8 of the 1937 Act ([42 U.S.C. 1437f](#)).

(3) If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.

(4) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.

(5) If the owner has engaged in drug-related criminal activity.

(6) If the owner has committed any violent criminal activity.

(b) The PHA rights and remedies against the owner under the HAP contract include recovery of overpayments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.

**Termination of HAP contract: Insufficient funding.**

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

**Automatic termination of HAP contract.**

The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.

**Third parties.**

(a) Even if the family continues to occupy the unit, the PHA may exercise any rights and remedies against the owner under the HAP contract.

(b)

(1) The family is not a party to or third party beneficiary of the HAP contract. Except as provided in [paragraph \(b\)\(2\)](#) of this section, the family may not exercise any right or remedy against the owner under the HAP contract.

(2) The tenant may exercise any right or remedy against the owner under the lease between the tenant and the owner, including enforcement of the owner's obligations under the tenancy addendum (which is included both in the HAP contract between the PHA and the owner; and in the lease between the tenant and the owner.)

*(c) The HAP contract shall not be construed as creating any right of the family or other third party (other than HUD) to enforce any provision of the HAP contract, or to assert any claim against HUD, the PHA or the owner under the HAP contract.*



## 2. DISTRIBUTION OF HOUSING ASSISTANCE PAYMENT

The Housing Authority pays the owner the lesser of the housing assistance payment or the rent to owner. If payments are not made within **30** business days of when due after the first two months of the HAP contract term, the owner may charge the Westerly Housing Authority a late payment, agreed to in the Contract and in accordance with generally accepted practices in the Westerly Housing Authority jurisdiction if the following conditions apply:

- A. It is the owner's practice to charge such penalties for assisted and unassisted residents; and
- B. The owner also charges such penalties against the resident for late payment of family rent to the owner.

Late charges will not be paid when the reason for the lateness is attributable to factors beyond the control of the Westerly Housing Authority.

A housing assistance payment is considered made upon being mailed or made by electronic means by the Westerly Housing Authority.

*If an owner receives HAP for any month in which the owner is ineligible to receive HAP because of a deceased tenant, the PHA will immediately notify the owner in writing of the ineligible HAP and require the owner to repay the overpayment within 30 days. If the owner does not comply, the PHA may deduct the amount due to the Authority from any amounts due to the owner under any other HAP contract. If there is no other HAP contract with the owner, the PHA may seek and obtain additional relief by judicial order or action in accordance with state and local laws.*

*In instances where a deceased single member household has been deceased for a period greater than 6 months and the owner received HAP, the PHA may determine that the owner has breached the HAP contract. As such, the PHA may exercise any of its rights and remedies under the HAP contract, or any other available rights and remedies for such breach. The PHA will notify the owner of such determination, including a brief statement of the reasons for the determination. The notice by the Authority to the owner may require the owner to take corrective action, as verified or determined by the PHA, by a deadline prescribed in the notice.*

*Unless otherwise terminated, the housing assistance payment contract shall end 180 calendar days after the last housing assistance payment is made.*

### ***When assistance is paid.***

*(a) Payments under HAP contract. Housing assistance payments are paid to the owner in accordance with the terms of the HAP contract. Housing assistance payments may only be paid to the owner during the lease term, and while the family is residing in the unit.*

*(b) Termination of payment: When owner terminates the lease. Housing assistance payments terminate when the lease is terminated by the owner in accordance with the lease. However, if the owner has commenced the process to evict the tenant, and if the family continues to reside in the unit, the PHA must continue to make housing assistance payments to the owner in accordance with the HAP contract until the owner has obtained a court judgment or other process allowing the owner to evict the tenant. The PHA may continue such payments until the family moves from or is evicted from the unit.*

*(c) Termination of payment: Other reasons for termination. Housing assistance payments terminate if:*

- (1) The lease terminates;*
- (2) The HAP contract terminates; or*
- (3) The PHA terminates assistance for the family.*

*(d) Family move-out.*

*(1) If the family moves out of the unit, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.*

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

***Absence from unit.***

*(a) The family may be absent from the unit for brief periods. For longer absences, the PHA administrative plan establishes the PHA policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days in any circumstance, or for any reason. At its discretion, the PHA may allow absence for a lesser period in accordance with PHA policy.*

*(b) Housing assistance payments terminate if the family is absent for longer than the maximum period permitted. The term of the HAP contract and assisted lease also terminate.*

*(The owner must reimburse the PHA for any housing assistance payment for the period after the termination.)*

*(c) Absence means that no member of the family is residing in the unit.*

(d)

*(1) The family must supply any information or certification requested by the PHA to verify that the family is residing in the unit or relating to family absence from the unit. The family must cooperate with the PHA for this purpose. The family must promptly notify the PHA of absence from the unit, including any information requested on the purposes of family absences.*

*(2) The PHA may adopt appropriate techniques to verify family occupancy or absence, including letters to the family at the unit, phone calls, visits or questions to the landlord or neighbors.*

*(e) The PHA administrative plan must state the PHA policies on family absence from the dwelling unit. The PHA absence policy includes:*

*(1) How the PHA determines whether or when the family may be absent, and for how long. For example, the PHA may establish policies on absences because of vacation, hospitalization or imprisonment; and*

*(2) Any provision for resumption of assistance after an absence, including readmission or resumption of assistance to the family.*

**Security deposit: Amounts owed by the tenant.**

*(a) The owner may collect a security deposit from the tenant.*

*(b) The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.*

*(c) When the tenant moves out of the dwelling unit, the owner, subject to State or local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid rent payable by the tenant, damages to the unit or for other amounts the tenant owes under the lease.*

*(d) The owner must give the tenant a written list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must refund promptly the full amount of the unused balance to the tenant.*

*(e) If the security deposit is not sufficient to cover the amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant.*

**Family break-up.**

(a)

*(1) The PHA has discretion to determine which members of an assisted family continue to receive assistance in the program if the family breaks up. The PHA administrative plan must state PHA policies on how to decide who remains in the program if the family breaks up.*

*(2) If the family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking as provided in [24 CFR part 5, subpart L](#) (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), the PHA must ensure that the victim retains assistance.*

*(b) The factors to be considered in making this decision under the PHA policy may include:*

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

*(2) The interest of minor children or of ill, elderly, or disabled family members.*

*(3) Whether family members are forced to leave the unit as a result of actual or threatened domestic violence, dating violence, sexual assault, or stalking.*

*(4) Whether any of the family members are receiving protection as victims of domestic violence, dating violence, sexual assault, or stalking, as provided in [24 CFR part 5, subpart L](#), and whether the abuser is still in the household.*

*(5) Other factors specified by the PHA.*

*(c) If a court determines the disposition of property between members of the assisted family in a divorce or separation under a settlement or judicial decree, the PHA is bound by the court's determination of which family members continue to receive assistance in the program.*

#### **Live-in aide.**

*(a) A family that consists of one or more elderly, near-elderly or disabled persons may request that the PHA approve a live-in aide to reside in the unit and provide necessary supportive services for a family member who is a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with [24 CFR part 8](#) to make the program accessible to and usable by the family member with a disability. (See [§ 982.402\(b\)\(6\)](#) concerning effect of live-in aide on family unit size.)*

*(b) At any time, the PHA may refuse to approve a particular person as a live-in aide, or may withdraw such approval, if:*

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

*(2) The person commits drug-related criminal activity or violent criminal activity; or*

*(3) The person currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.*

## 1. REXAMINATIONS

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.*

### **Calculation of Rent (PIH notice 2023-27 rev.)**

*PHAs must first determine the family's income for the previous 12-month period and use this amount as the family income for annual reexaminations; however, adjustments to reflect current income must be made. Any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination of family income in accordance with the PHAs policies and 24 CFR §§ 5.657(c), 960.257(b), or 982.516(c), must be considered. Income from assets is always anticipated, irrespective of the income examination type.*

A change in income, for example, may be a loss of income or the addition of a new source of income. Changing to a different employer in the prior year does not necessarily constitute a change if the income earned from either employer is substantially the same. PHAs will look at the entirety of the family's unearned income and earned income from the prior year, in which earned income may have been one constant job or many different jobs that start and stop. Cost of Living Adjustments (COLA) to Social Security income and Social Security disability income are always considered changes to income because the COLA is an adjustment that automatically occurs annually by law. The three steps outlined below apply for both earned and unearned income.

### **Overview of Calculating Annual Income at Annual Reexamination**

**Step 1:** Determine the annual income for the previous 12-month period as defined at 24 CFR § 5.609(a) and (b). If there have been no changes to income beyond this calculation, then this is the amount that will be used to determine the family's rental assistance.

The PHA reviews the following information to determine prior-year income:

- The EIV Income Report (must be pulled within 120 days of the effective date of the annual reexamination to be considered current);
- The income reported on the most recent reexamination HUD-50058/HUD-50059; and
- What the family certified to on the PHA's current annual reexamination paperwork for prior-year income, if available.

**Step 2:** Take into consideration any interim reexamination of family income completed since the last annual reexamination.

- If an interim reexamination was performed within the reexamination cycle and there are no additional changes, the PHA must use the annual income from the interim reexamination to determine the family's rental assistance. The PHA may use the verification obtained from the interim reexamination for this step.
- If the PHA did not perform an interim reexamination or if the family reports that there have been changes since the last reexamination, move to Step 3.

**Step 3:** If there were changes in annual income not processed by the PHA since the last reexamination, use current income.

- Family reports their income for the prior year and whether there have been permanent changes.

If there are no reported changes to an income source, the PHA may use documentation of prior-year income to calculate the annual income used for the current annual reexamination HUD-50058/HUD-50059. For example, the PHA could use the following documentation:

- EIV + self-certification (wages, Supplemental Security Income (SSI), Social Security, and unemployment)
- Current level 4 documents verifying prior-year income that are dated within

*the required timeframe (120 days of receipt by the PHA), for example:*

- o Year-end statement*
- o Pay stub with year-to-date amount*
- o Tax forms (Form 1040, W2, 1099, etc.)*

*If there are reported changes by the family or the PHA notes discrepancies between EIV and what the family reports, follow the verification hierarchy to document and verify income.*

### ***Applying the Current SSA COLA at Next Annual and Interim Reexamination***

*Annually in October, the Social Security Administration (SSA) announces the cost-of-living adjustment (COLA) by which federal SS and SSI benefits are adjusted to reflect the increase, if any, in the cost of living as measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers prepared by the Bureau of Labor Statistics. The purpose of the COLA is to ensure that the purchasing power of SS and SSI benefits are not eroded by inflation. The federal COLA does not apply to state-paid disability benefits. Additional information regarding the SSA COLA is available online at [www.socialsecurity.gov](http://www.socialsecurity.gov).*

*Effective the day after SSA has announced the COLA, PHAs/MFH Owners are required to factor in the COLA when determining SS and SSI annual income for all annual reexaminations and interim reexaminations of family income that have not yet been completed and will be effective January 1 or later of the upcoming year.*

### ***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.

(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.*

**Streamlined income determination 24 CFR 960.257(c)**

**(1) General.** A PHA may elect to apply a streamlined income determination to families receiving fixed income, as described in [paragraph \(c\)\(3\)](#) of this section.

**(2) Definition of "fixed income".** For purposes of this section, "fixed income" means periodic payments at reasonably predictable levels from one or more of the following sources:

**(i) Social Security, Supplemental Security Income, Supplemental Disability Insurance.**

**(ii) Federal, state, local, or private pension plans.**

**(iii) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts.**

**(iv) Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.**

**(3) Method of streamlined income determination.** A PHA using the streamlined income determination must adjust a family's income according to the percentage of a family's unadjusted income that is from fixed income.

**(i) When 90 percent or more of a family's unadjusted income consists of fixed income, PHAs using streamlined income determinations must apply a COLA or COLAs to the family's sources of fixed income, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year. For non-fixed income, the PHA is not required to make adjustments pursuant to [paragraph \(a\)](#) of this section.**

**(ii) When less than 90 percent of a family's unadjusted income consists of fixed income, PHAs using streamlined income determinations must apply a COLA to each of the family's sources of fixed income individually. The PHA must determine all other income pursuant to [paragraph \(a\)](#) of this section.**

**Table 11: PHA Action at Point in Time in Streamlining Cycle**

<b>Point in Time in Streamlining Cycle</b>	<b>PHA Action</b>
<b>Year 1</b>	<b>1. PHA completes a move in consistent with the regulations</b>

2. Years 2 and 3	<p>3. PHA completes an Annual Reexamination with the following streamlined income determination for each type of source:</p> <ul style="list-style-type: none"> <li>• <b>Fixed Income:</b> Apply inflation adjustment factor; PHA does not collect third-party verification.</li> <li>• <b>Non-fixed income when fixed income is more than 90 percent of unadjusted income:</b> PHA has discretion to either adjust the income using third-party verification or use the previous year's calculation.</li> <li>• <b>Non-fixed income when fixed income is less than 90 percent of unadjusted income:</b> PHA must adjust the income using third-party verification.</li> <li>• <b>Assets and Deductions:</b> PHA completes verification and calculation of assets and deductions.</li> </ul>
4. Year 4	5. Three-year cycle starts over.

(4) **COLA rate applied by PHAs.** PHAs using streamlined income determinations must adjust a family's fixed income using a COLA or current interest rate that applies to each specific source of fixed income and is available from a public source or through tenant-provided, third-party-generated documentation. If no public verification or tenant-provided documentation is available, then the owner must obtain third-party verification of the income amounts in order to calculate the change in income for the source.

(5) **Triennial verification.** For any income determined pursuant to a streamlined income determination, a PHA must obtain third-party verification of all income amounts every 3 years.

### **INTERIM REEXAMINATIONS**

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

*A family may request an interim determination of family income for any changes since the last determination. However, the PHA may decline to conduct the interim reexamination of family income if the PHA estimates that the family adjusted income will decrease by an amount that is less than 10% (percent) per year. The PHA can choose a lower threshold amount if the PHA has chosen a lower amount insert it in lieu of the 10%. The PHA can also choose not to conduct an interim reexamination for any increase in the family income.*

*Families will experience a interim reexamination if the PHA has determined that the net family income has increased by 10% or more unless the family has not had an interim reexamination reporting a decrease in family income within the same reexamination cycle and if the reported increase is within 3 months prior to the next annual reexamination. If it is discovered that the family waited until the 3-month period before their next annual reexamination, the family may be subject to retroactive rent increases.*

Families are still required to report changes either in a decrease or increase in family income even if the reporting does not result in a change to the family's rent. These reports will be reflected in the tenant file.

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 may 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. An interim reexamination will occur when there is a decrease in family size, this is not subject to the 10% decrease requirement only if there is a decrease in family income. If there is no decrease in family income then the non income interim reexamination will occur.

Or

The family will report all changes in family composition and income and the PHA will determine if there is a need for an interim reexamination.

C. There is a change to the Net Family Assets that would affect the Adjusted income.

D. There is a change in the family OVER INCOME LIMIT status for Public Housing only.

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.

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. A live-in-aide must meet the following additional requirements in order to have their income excluded:

**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))

Families are required to report all changes in Household composition within 10 days, changes in annual income are to be

NPHOI families are not subject to income reexaminations. Unless there is a financial hardship or other hardship as indicated above.

#### **NON-INTERIM REEXAMINATION TRANSACTIONS:**

If a family experiences any of the following transactions, they still must report it to the PHA:

Adding or removing a hardship exemption for the child care expense deduction

Updating of removing the phased in hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction (the phased in relief will begin at an eligible family's first annual or interim reexamination whichever is sooner after January 1, 2024).

Adding or removing a general hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction.

Adding or removing a minimum rent hardship

Adding or removing a non family member (i.e. live-in-aide, foster child or foster adult).

Ending a family's EID or excluding 50 percent (decreased from 100%) of a family member's increase in employment income at the start of the second 12-month EID period.

Adding a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule.

*Removing a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule.*

*Adding/Updating a family or household member's Social Security number and*

*Updating a family member's citizenship status from eligible to ineligible or vice versa resulting in a change to the family's rent and/or utility reimbursement. If applicable i.e. the family begins receiving prorated assistance or previously prorated assistance become full assistance), or updating the prorated rent calculation due to the addition or removal of family members in household with an ineligible non-citizen(s).*

### **EFFECTIVE DATE OF RENT CHANGES DUE TO INTERIM OR SPECIAL REEXAMINATIONS**

*Interim reexaminations that are reported timely will be provided with a 30-day advance notice of any rent increases and those rent increases will be effective the first day of the month beginning after the end of the 30-day period. (NOTE: This translates to 60 days from the date of the reporting and recalculation of rent.)*

*If the new rent is a reduction rent decreases will be effective on the first day of the month after the date of the actual change leading to the interim reexamination of family income. This means that the decrease will be applied retroactively.*

*Any resulting rent decrease must be implemented no later than the first rent period following completion of the reexaminations. The PHA may choose to adopt a policy that would make the effective date of an interim reexamination retroactive to the first of the month following the date of the actual decrease in income as opposed to the first of the month following completion of the reexamination, this may be waived due to a natural disaster or disruption to the PHA's operations.*

### **DE MINIMIS ERRORS**

*A De Minimis Error is an error that results in a difference in the determination of a family's adjusted income of \$30 or less per month. If the error results in the family underpaying their rent, the family will not be held liable for the difference in unpaid rent.*

### **ZERO INCOME REVIEWS:**

*A "zero income review" is an assessment, sometimes periodic, performed by the PHA of the income of a family who claims that they do not receive income from any source, including from assets. During such reviews, it is common for PHAs to request that families complete and sign a worksheet explaining how they pay for the household's expenses. HUD does not require PHAs to conduct periodic zero income reviews.*

*In calculating annual income, PHAs must not assign monetary value to non-monetary in-kind*



*donations from a food bank or similar organization received by the family (24 CFR § 5.609(b)(24)(vi)). PHAs/ perform an interim reexamination only due to an increase in the family's adjusted income (24 CFR §§ 5.657(c)(3); 960.257(b)(3); and 982.516(c)(3)).*

*PHAs that will continue to perform zero income reviews must update local discretionary policies, procedures, and forms to comply with the final rule requirements. For example, families who begin receiving income which does not trigger an interim reexamination should no longer be considered zero income even though the family's income is not reflected on the form HUD-50058.*

## 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.

### ***Tenant Repayment Agreement.***

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

*This rent underpayment is commonly referred to as retroactive rent. If the tenant refuses to enter into a repayment agreement or fails to make payments on an existing or new repayment agreement, the PHA must terminate the family's tenancy or assistance, or both. HUD does not authorize any PHA-sponsored amnesty or debt forgiveness programs.*

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

- 1. Reference to the paragraphs in the Public Housing lease or Section 8 information packet whereby the tenant is in non-compliance and may be subject to termination of tenancy or assistance, or both.*
- 2. The monthly retroactive rent repayment amount is in addition to the family's regular rent contribution and is payable to the PHA.*
- 3. The terms of the agreement may be renegotiated if there is a decrease or increase in the family's income.*
- 4. Late and missed payments constitute default of the repayment agreement and may result in termination of tenancy and/or assistance.*

*PHAs are required to determine retroactive rent amount as far back as the PHA has documentation of family reported income. For example, if the PHA determines that the family has not reported income for a period of five years and only has documentation for the last three years, the PHA is only able to determine retroactive rent for the three years for which documentation is available.*

*The monthly retroactive rent payment plus the amount of rent the tenant pays at the time the repayment agreement is executed should be affordable and not exceed 40 percent of the family's monthly adjusted income. However, PHAs have the discretion to establish thresholds and policies for repayment agreements in addition to HUD required procedures. (PIH 2017-12).*



## 2025 HUD Inflation-Adjusted Values (Table 1): Effective January 1, 2025

**Note:** If your agency/property/program administrator is not yet complying with Sections 102 and 104 of HOTMA, you will not utilize this table. Annual inflationary adjustments, the new thresholds (e.g., asset limitation), and the requirement to use this passbook rate are among the provisions of Sections 102 and 104 of HOTMA.

Calculation Component	Adjusted Item	Regulatory Reference	Amount	Applicable Programs <sup>1</sup>
<b>Asset Limitation</b>	Eligibility restriction on net family assets	24 CFR § 5.618(a)(1)(i)	\$103,200	Section 8 PBRA, 202/8, HCV, Public Housing, Section 8 Mod Rehab, Section 8 Mod Rehab SRO, HOPWA
	Threshold above which imputed returns must be calculated on net family assets	24 CFR §§ 5.609(a)(2) and (b)(1)	\$51,600	Section 8 PBRA, 202/8, 202/811 PRAC, 236 IRP, 811 PRA, SPRAC, HCV, Public Housing, Section 8 Mod Rehab, Section 8 Mod Rehab SRO, HOPWA, HOME, HTF
<b>Annual Income</b>	Threshold above which the total value of non-necessary personal property is included in net family assets	24 CFR § 5.603(b) <i>Definition Net family assets</i>	\$51,600	Section 8 PBRA, 202/8, 202/811 PRAC, 236 IRP, 811 PRA, SPRAC, HCV, Public Housing, Section 8 Mod Rehab, Section 8 Mod Rehab SRO, HOPWA, HOME, HTF
	The amount of net assets for which the PHA/MFH Owner/Grantee may accept self-certification by the family	24 CFR § 5.618(b)(1) 24 CFR § 5.659(e) 24 CFR § 92.203(e)(1) 24 CFR § 93.151(e)(1) 24 CFR § 882.515(a) 24 CFR § 882.808(i)(1) 24 CFR § 960.259(c)(2) 24 CFR § 982.516(a)(3)	\$51,600	Section 8 PBRA, 202/8, 202/811 PRAC, 236 IRP, 811 PRA, SPRAC, HCV, Public Housing, Section 8 Mod Rehab, Section 8 Mod Rehab SRO, HOPWA, HOME, HTF

<sup>1</sup> Some components in Tables 1 & 2 may also apply to other HUD programs not listed here that use the definitions of annual income and adjusted income in 24 CFR Part 5, subpart F to determine eligibility or assistance levels.

<b>Calculation Component</b>	<b>Adjusted Item</b>	<b>Regulatory Reference</b>	<b>Amount</b>	<b>Applicable Programs<sup>1</sup></b>
<b>Annual Income</b>	Income exclusion for earned income of dependent full-time students	24 CFR § 5.609(b)(14)	\$480	Section 8 PBRA, 202/8, 202/811 PRAC, 236 IRP, 811 PRA, SPRAC, HCV, Public Housing, Section 8 Mod Rehab, Section 8 Mod Rehab SRO, HOPWA, HOME, HTF
	Income exclusion for adoption assistance payments	24 CFR § 5.609(b)(15)	\$480	Section 8 PBRA, 202/8, 202/811 PRAC, 236 IRP, 811 PRA, SPRAC, HCV, Public Housing, Section 8 Mod Rehab, Section 8 Mod Rehab SRO, HOPWA, HOME, HTF
<b>Adjusted Income</b>	Mandatory deduction for elderly and disabled families	24 CFR § 5.611(a)(2)	\$525	Section 8 PBRA, 202/8, 202/811 PRAC, 236 IRP, 811 PRA, SPRAC, HCV, Public Housing, Section 8 Mod Rehab, Section 8 Mod Rehab SRO, HOPWA, HOME
	Mandatory deduction for a dependent	24 CFR § 5.611(a)(1)	\$480	Section 8 PBRA, 202/8, 202/811 PRAC, 236 IRP, 811 PRA, SPRAC, HCV, Public Housing, Section 8 Mod Rehab, Section 8 Mod Rehab SRO, HOPWA, HOME



## 2025 HUD Passbook Savings Rate (Table 2): Effective January 1, 2025

Adjusted Item	Regulatory Reference	Rate	Applicable Programs
Passbook Savings Rate	24 CFR 5.609(a)	0.45%	Section 8 PBRA, 202/8, 202/811 PRAC, 236 IRP, 811 PRA, SPRAC, HCV, Public Housing, Section 8 Mod Rehab, Section 8 Mod Rehab SRO, HOPWA, HOME, HTF

## **1. MOVES WITH CONTINUED ASSISTANCE**

*Participating families are allowed to move to another unit after the initial lease has expired, if the landlord and the participant have mutually agreed to terminate the lease, or if the Housing Authority has terminated the HAP contract. The PHA will issue the family a new housing choice voucher if the family does not owe the PHA or any other Housing Authority money, has not violated a Family Obligation, has not moved or been issued a housing choice voucher within the last 12 months, and if the PHA has sufficient funding for continued assistance. If the move is necessitated for a reason other than family choice, the 12-month requirement will be waived. This policy is consistent with all civil rights laws and regulations.*

### **WHEN A FAMILY MAY OR MAY NOT MOVE**

*For families already participating in the Housing Choice Voucher Program, the PHA will allow the family to move to a new unit if:*

- A. The assisted lease for the old unit has terminated;*
- B. The owner has given the resident a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the participant; or*
- C. The participant has given notice of lease termination (if the participant has a right to terminate the lease on notice to the owner).*
- D. The family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member. The PHA will not terminate assistance if the family, with or without prior notification to the housing authority, already moved out of a unit in violation of the lease, if such move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the dwelling unit.*

*For families already participating in the Housing Choice Voucher Program, the PHA will not allow the family to move to a new unit if:*

- A. The family is not income eligible in the receiving agency's jurisdiction; or*
- B. The family has moved out of their unit in violation of the lease unless the reason for the move is to protect a victim of VAWA who is otherwise in full compliance with all other program requirements and reasonably believed to be in imminent danger from the abuser.*

*For families already participating in the Housing Choice Voucher Program, the PHA may deny a family's request to move to a new unit:*

- A. If the family violates any family obligations under the program;*
- B. If any member of the family has been evicted from federally assisted housing in the last five years;*
- C. If a PHA has ever terminated assistance under the program for any member of the family;*
- D. If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program;*
- E. If the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act;*
- F. If the family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease;*
- G. If the family breaches an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA. (The PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.);*
- H. If a family participating in the FSS program fails to comply, without good cause, with the family's FSS contract of participation;*
- I. If the family has engaged in or threatened abusive or violent behavior toward PHA personnel;*
- J. If a welfare-to-work (WTW) family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program;*
- K. If the family has been engaged in criminal activity or alcohol abuse*
- L. If the family does not comply with our policy on the timing and frequency of moves.*
- M. If the family is not eligible for portability due to being a nonresident when admitted to the program; or*
- N. If the PHA has insufficient funding for continued assistance to the family.*

1. *A voucher cannot be rescinded if the PHA has approved a move, subsequently finds out a funding shortfall will occur and the family cannot remain in its old unit (e.g. the unit has already been leased to another family).*
2. *Under portability, an initial housing authority cannot terminate a portability unit because it is not a party to the HAP contract.*

### **PROCEDURES REGARDING FAMILY MOVES**

*Families considering transferring to a new unit will be scheduled to attend a mover's briefing. All families who are moving, including any families moving into or out of the PHA's jurisdiction, will be required to attend a mover's briefing prior to the PHA entering a new HAP contract on their behalf.*

*This briefing is intended to provide the following:*

- A. *A refresher on program requirements and the family's responsibilities. Emphasis will be on giving proper notice and meeting all lease requirements such as leaving the unit in good condition;*
- B. *Information about finding suitable housing and the advantages of moving to an area that does not have a high concentration of poor families;*
- C. *Payment standards, exception payment standard rent areas, and the utility allowance schedule;*
- D. *An explanation that the family share of rent may not exceed 40% of the family's monthly adjusted income if the gross rent exceeds the applicable payment standard when initially renting a unit;*
- E. *Portability requirements and opportunities;*
- F. *The need to have a reexamination conducted within 120 calendar days prior to the move;*
- G. *An explanation and copies of the forms required to initiate and complete the move; and*
- H. *All forms and brochures provided to applicants at the initial briefing.*

*Families are required to give proper written notice of their intent to terminate the lease. In accordance with HUD regulations, no notice requirement may exceed 60 calendar days. During the initial term, families may not end the lease unless they and the owner mutually agree to end the lease. If the family moves from the unit before the initial term of the lease*



*ends without the owner's and the PHA's approval, it will be considered a serious lease violation and subject the family to termination from the program.*

*The family is required to give the PHA a copy of the notice to terminate the lease at the same time as it gives the notice to the landlord. A family's failure to provide a copy of the lease termination notice to the PHA will be considered a violation of Family Obligations and may cause the family to be terminated from the program.*

*A family who gives notice to terminate the lease must mail the notice by certified mail or have the landlord or his agent sign a statement stating the date and time received. The family will be required to provide the certified mail receipt and a copy of the lease termination notice to the PHA, or a copy of the lease termination notice and the signed statement stating the date and time the notice was received. If the landlord or his/her agent does not accept the certified mail receipt, the family will be required to provide the receipt and envelope showing that the attempt was made.*

*Failure to follow the above procedures may subject the family to termination from the program.*

## **2. PORTABILITY**

### **GENERAL POLICIES OF THE PHA**

*A family whose head or spouse has a domicile (legal residence) in the jurisdiction of the PHA at the time the family first submits its application for participation in the program to the PHA may lease a unit anywhere in the jurisdiction of the PHA or outside the PHA jurisdiction as long as there is another entity operating a tenant-based Housing Choice Voucher program covering the location of the proposed unit.*

If the head or spouse of the assisted family does not have a legal residence in the jurisdiction of the PHA at the time of its application, the family will not have any right to lease a unit outside of the PHA jurisdiction for a 12-month period beginning when the family is first admitted to the program. During this period, the family may only lease a unit located in the jurisdiction of the PHA. This does not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member.

*A family's eligibility to exercise the portability option is to be determined by the Initial Housing Authority.*

*If a family chooses to port to another housing authority's jurisdiction, the Initial Housing Authority shall inform the family that it may be re-screened by the Receiving Housing Authority and may lose its assistance if the family fails to meet the Receiving Housing Authority's screening criteria.*

*Families participating in the Housing Choice Voucher Program will not be allowed to move more than once in any 12-month period and under no circumstances will the PHA allow a participant to improperly break a lease. Under extraordinary circumstances the PHA may consider allowing more than one move in a 12-month period. This does not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member.*

*Families may only move to a jurisdiction where a Housing Choice Voucher Program is being administered. If more than one housing authority operates a Housing Choice Voucher in the jurisdiction where the participant is moving, the participant may choose which housing authority the participant wants to administer the voucher.*

*For income targeting purposes, the family will count towards the initial housing authority's goals unless the receiving housing authority absorbs the family. If absorbed, the admission will count towards the receiving housing authority's goals.*

*If a family has moved out of their assisted unit in violation of the lease, the PHA will not issue a voucher and will terminate assistance in compliance with Section 17.0, Termination*

*of the Lease and Contract. This will not apply if the family has complied with all program requirements and the family has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.*

*Any of the above general policies will be waived by the PHA in order to help participants who are compliant with their existing leases but who reasonably believe they need to move to protect the health and/or safety of a victim of domestic violence, dating violence sexual assault, or stalking. In order to exercise this waiver, the participant shall provide the PHA with appropriate verification. Types of acceptable verifications are outlined in Section 17.2 of this Section 8 Administrative Plan, and must be submitted within 14 business days after receipt of the Housing Authority's written request for verification.*

*To the degree possible, portability moves will be utilized to affirmatively further fair housing.*

#### ***INCOME ELIGIBILITY***

- A. A family must be income-eligible in the area where the family first leases a unit with assistance in the Housing Choice Voucher Program.*
- B. If a portable family is already a participant in the Initial Housing Authority's Housing Choice Voucher Program, income eligibility is not re-determined.*

#### ***PORTABILITY: ADMINISTRATION BY RECEIVING HOUSING AUTHORITY***

- A. When a family utilizes portability to move to an area outside the Initial Housing Authority jurisdiction, another Housing Authority (the Receiving Housing Authority) must administer assistance for the family if that Housing Authority has a tenant-based program covering the area where the unit is located.*
- B. A Housing Authority with jurisdiction in the area where the family wants to lease a unit must issue the family a housing choice voucher. If there is more than one such housing authority, the family may choose which housing authority shall become the Receiving Housing Authority. The Initial Housing Authority shall provide the family with the appropriate contact information for the Receiving Housing Authority.*

#### ***PORTABILITY PROCEDURES***

- A. When the PHA is the Initial Housing Authority:*

1. *The PHA will brief the family on the process that must take place to exercise portability. The family will be required to attend an applicant or mover's briefing.*
2. *The PHA will determine whether the family is income-eligible in the area where the family wants to lease a unit if the family is not already a program participant and otherwise eligible to move.*
3. *The PHA will advise the family how to contact and request assistance from the Receiving Housing Authority by giving them the name, email and telephone number of the person responsible for working with incoming portability families and any procedures related to getting an appointment for the issuance of a voucher. If there is more than one agencies administering vouchers in the area the family wants to move to, the family shall choose which one to use.*
4. *The PHA will, within ten (10) calendar days, notify the Receiving Housing Authority to expect the family via email or other delivery confirmation.*
5. *The PHA will immediately mail, email or fax the Receiving Housing Authority a completed Part I of HUD Form 52665, the most recent HUD Form 50058 (Family Report) for the family, related verification information, and a copy of the family's voucher. If the family is an applicant and not a participant, the PHA will provide the Receiving Housing Authority with the family information and income information in a format similar to that utilized by the 50058. It shall also provide any verification information and a copy of the voucher signed by the participant and the PHA.*

*B. When the PHA is the Receiving Housing Authority:*

1. *When the portable family requests assistance from the PHA, the PHA will within ten (10) business days of HAP contract execution (not its effective date) inform the Initial Housing Authority via email or other delivery confirmation that it will absorb the family into its program or notify the Initial Housing Authority within the time limit set forth in Part I of the 52665 that it will bill the Initial Housing Authority for assistance on behalf of the portable family. Completing Part II of HUD Form 52665 in a timely manner (10 business days or less of the date the HAP contract is executed) will accomplish this. If the family is absorbed, the PHA will also send the Initial Housing Authority a new HUD Form 50058.*
2. *The PHA will issue a voucher to the family within fourteen (14) calendar days as long as the initial voucher has not expired (if it has expired, the PHA will contact the Initial Housing Authority to determine whether it will extend the voucher or if the family shall be referred back to the Initial*

*Housing Authority). The term of the PHA's voucher will not expire before 30 calendar days after the expiration date of any Initial Housing Authority's housing choice voucher. The PHA will determine whether to extend the housing choice voucher term. The decision to extend will take into account the PHA's existing absorption policy and the billing deadline date provided by the Initial Housing Authority in the 52665. If an extension is granted, the Initial Housing Authority will be informed of this decision. The family must submit a request for tenancy approval to the PHA during the term of the PHA's housing choice voucher. If the PHA has decided to bill the Initial Housing Authority, the request for tenancy approval must be processed in enough time for the Initial Housing Authority to process a Request for Lease Approval and execute a HAP contract before the billing deadline date.*

3. *The PHA will determine the family unit size for the portable family. The family unit size is determined in accordance with the PHA's subsidy standards. If we want to do so, the PHA reserves the right to conduct an income reexamination for a participant family. Also, when the receiving housing authority, the PHA's policies will govern the ported voucher.*
4. *The PHA will notify the Initial Housing Authority if the family has leased an eligible unit under the program, or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the housing choice voucher. In any event the PHA will notify the Initial Housing Authority of what is occurring before the expiration of the deadline established in the HUD Form 52665. If the family has leased a unit, the PHA will notify the Initial Housing Authority of this fact in enough time for the Initial Housing Authority to process a Request for Lease Approval and execute a HAP contract if the PHA intends to bill the Initial Housing Authority.*
5. *In order to provide tenant-based assistance for portable families, the PHA will perform all Housing Authority program functions, such as reexaminations of family income and composition. At any time, either the Initial Housing Authority or the PHA may make a determination to deny or terminate assistance to the family. If assistance is denied or terminated, the family shall have a right to an informal hearing.*
6. *The PHA may deny or terminate assistance for family action or inaction in accordance with 24 CFR 982.552 and 24 CFR 982.553.*
7. *As the receiving housing authority, the PHA will accept all eligible portability families, with limited exceptions. If an exception is utilized, the PHA will seek prior written approval from HUD.*
8. *If a family is denied admission to the program, the participant is entitled to request an informal hearing.*

9. *If the family decides not to lease in our jurisdiction, it shall be referred back to the Initial Housing Authority.*
10. *Although the PHA will promptly issue a voucher to an incoming portability family, it will still subject the families to its normal screening procedures. If the family fails to pass the screening thresholds either the voucher will be revoked or the family will be terminated from the program if a unit has already been leased.*

*C. Absorption by the PHA*

*If funding is available under the consolidated ACC for the PHA's Housing Choice Voucher Program when the portable family is received, the PHA may absorb the family into its Housing Choice Voucher Program. The decision to absorb or not will be made on a case-by-case basis and will solely be the decision of the PHA. If absorbed, the family is assisted with funds available under the consolidated ACC for the PHA's Tenant-Based Program. The decision to absorb, or not, will be communicated in writing to the initial housing authority as soon as possible. A decision to absorb is irreversible without the permission of the initial housing authority.*

*D. Portability Billing*

*To cover assistance for a portable family, the Receiving Housing Authority may bill the Initial Housing Authority for housing assistance payments and administrative fees as long as all HUD required deadlines have been compiled with. The billing procedure will be as follows:*

1. *As the Initial Housing Authority, the PHA will within thirty (30) calendar days of receipt of the completed Part II of the HUD Form 52665 reimburse the Receiving Housing Authority for the full amount of the housing assistance payments made by the Receiving Housing Authority for the portable family in a form and manner the Receiving Housing Authority is able and willing to accept. Payments made after the first payment shall be sent in time for the Receiving Housing Authority to receive the payment no later than the fifth working day of the month. The amount of the housing assistance payment for a portable family in the Receiving Housing Authority's program is determined in the same manner as for other families in the Receiving Housing Authority's program.*
2. *The Initial Housing Authority will promptly reimburse the Receiving Housing Authority for the lesser of 80% of its prorated column B administrative fee, 100% of the Receiving Housing Authority's normal column B administrative fee, or a negotiated amount that both housing authorities agree to of the Initial Housing Authority's ongoing*

*administrative fee for each unit month that the family receives assistance under the tenant-based programs and is assisted by the Receiving Housing Authority. If HUD is prorating the administrative fee, the prorated amount will be used.*

*E. When a Portable Family Moves*

*When a portable family moves out of the tenant-based program of a Receiving Housing Authority that has not absorbed the family, the Housing Authority in the new jurisdiction to which the family moves becomes the Receiving Housing Authority, and the first Receiving Housing Authority is no longer required to provide assistance for the family.*

*F. Ongoing Responsibilities as a Receiving Housing Authority*

*When the PHA is a receiving agency it will:*

- 1. Send the Initial Housing Authority an updated HUD Form 50058 at each annual recertification so the Initial Housing Authority can reconcile it with its records.*
- 2. Send the Initial Housing Authority a copy of any new HUD Forms 52665s and 50058s to report any change in the billing amount within ten (10) business days of the effective date of any change in the billing amount. If the Receiving Housing Authority fails to update the 50058 on time, the Initial Housing Authority will continue payments based on the last 50058 received.*
- 3. If the PHA decides to absorb a family it had previously been billing for, it shall notify the Initial Housing Authority within ten (10) business days following the effective date of the termination of the billing arrangement.*
- 4. If the family decides it wants to move to yet another jurisdiction, the Initial Housing Authority shall be promptly notified and requested to send a new HUD Form 52665 and supporting documentation to the new Receiving Housing Authority.*
- 5. Any special purpose vouchers shall retain their original character and rules.*
- 6. Retain copies of all communication between Initial and Receiving Housing Authorities.*

## **1. TERMINATION OF THE LEASE AND CONTRACT**

*The term of the lease and the term of the HAP contract are the same. They begin on the same date, and they end on the same date. The lease may be terminated by the owner, by the participant, or by the mutual agreement of both. The owner may only terminate the contract by terminating the lease. The HAP contract may be terminated by the PHA. Under some circumstances the contract automatically terminates.*

### **A. Termination of the Lease**

#### **1. By the family**

*The family may terminate the lease without cause upon proper notice to the owner and to the PHA after the initial lease term. The length of the notice that is required is stated in the lease (generally 30 calendar days).*

#### **2. By the owner**

*The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person in accordance with this section if the owner determines that the covered person has engaged in a 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. Arrests alone are not sufficient evidence of criminal activity.*

*An arrest record, alone, will not serve as sufficient evidence of criminal activity that can support an eviction decision. Before an owner denies admission to or 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. An owner 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 law and regulation permit the owner to take an action but do not require action to be taken, the owner may take or not take the action in accordance with the owner's standards for eviction. The owner may*



*consider all of the circumstances relevant to a particular eviction case, such as:*

- a. The seriousness of the offending action;*
- b. The effect on the community of denial or termination or the failure of the owner to take such action;*
- c. The extent of participation by the leaseholder in the offending action;*
- d. The effect of denial of admission or termination of tenancy on household members not involved in the offending activity;*
- e. The demand for assisted housing by families who will adhere to lease responsibilities;*
- f. The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;*
- g. The effect of the owner's action on the integrity of the program.*

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

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

*The owner's termination of assistance actions must be consistent with the fair housing and equal opportunity provision of 24 CFR 5.105.*

- a. The owner may terminate the lease during its term on the following grounds:*
  - i. Serious or repeated violations of the terms or conditions of the lease;*

- ii. *Violation of Federal, State, or local law that imposes obligations on the participant in connection with the occupancy or use of the unit and its premises;*
- iii. *Criminal activity by the household, a guest, or another person under the control of the household that threatens the health, safety, or right to peaceful enjoyment of the premises by other persons (including property management staff) residing on the premises or in the immediate vicinity of the premises;*
- iv. *Any drug-related or violent criminal activity engaged in on or near the premises by any resident, household member, or guest, or such activity engaged in on the premises by any other person under the tenant's control, is grounds for the owner to terminate tenancy;*
- v. *When the owner determines that a household member is illegally using a drug or when the owner 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.*
- vi. *If a participant 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.*
- vii. *If the tenant is violating a condition of probation or parole imposed under Federal or State law.*
- viii. *Other good cause. Other good cause may include, but is not limited to:*
  - (1) *Failure by the family to accept the offer of a new lease;*
  - (2) *Family history of disturbances of neighbors or destruction of property, or living or housekeeping habits resulting in damage to the property or unit;*

- (3) *The owner's desire to utilize the unit for personal or family use or for a purpose other than use as a residential rental unit;*
- (4) *A business or economic reason such as sale of the property, renovation of the unit, desire to rent at a higher rental amount.*

*The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person in accordance with this section if the owner 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. However, an arrest alone is insufficient evidence to terminate a tenancy.*

- b. *During the first year the owner may not terminate tenancy for other good cause unless the reason is because of something the household did or failed to do.*
- c. *The owner may only evict the participant by instituting court action after or simultaneously providing written notice to the participant specifying the grounds for termination. The owner must give the PHA a copy of any owner eviction notice to the participant at the same time that the owner gives the notice to the participant.*
- d. *The owner may terminate the contract at the end of the initial lease term or any extension of the lease term without cause by providing notice to the family that the lease term will not be renewed.*

3. *By mutual agreement*

*The family and the owner may at any time mutually agree to terminate the lease.*

B. *Termination of the Contract*

1. *Automatic termination of the contract*

- a. *If the PHA terminates assistance to the family, the contract terminates automatically.*
- b. *If the family moves out of the unit, the contract terminates automatically.*

- c. *180 calendar days after the last housing assistance payment to the owner.*
2. *Termination of the contract by the owner*

*The owner may only terminate tenancy in accordance with the lease and State and local law.*

3. *Termination of the HAP contract by the PHA*

*The Housing Authority may terminate the HAP contract because:*

- a. *The Housing Authority has terminated assistance to the family.*
- b. *The unit does not meet HQS space standards because of an increase in family size or change in family composition.*
- c. *When the family breaks up and the PHA determines that the family members who move from the unit will continue to receive the assistance.*
- d. *The PHA determines that there is insufficient funding in their contract with HUD to support continued assistance for families in the program.*
- e. *The owner has breached the contract in any of the following ways:*
  - i. *If the owner has violated any obligation under the HAP contract for the dwelling unit, including the owner's obligation to maintain the unit in accordance with the HQS.*
  - ii. *If the owner has violated any obligation under any other housing assistance payments contract under Section 8 of the 1937 Act.*
  - iii. *If the owner has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program.*
  - iv. *For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement.*

v. *If the owner has engaged in drug-related criminal activity or any violent criminal activity.*

f. *If a welfare-to-work family fails to fulfill its obligations under the welfare-to-work voucher program.*

4. *Final HAP payment to owner*

*The HAP payment stops when the lease terminates. The owner may keep the payment for the month in which the family moves out. If the owner has begun eviction proceedings and the family continues to occupy the unit, the Housing Authority will continue to make payments until the owner obtains a judgment or the family moves out.*

## 2. TERMINATION OF ASSISTANCE TO THE FAMILY

[24 CFR 982.552 AND 982.553 HAVE SEVERAL “MUST TERMINATE” AND SEVERAL “MAY TERMINATE” SECTIONS. THE FOLLOWING HAS BEEN ARRANGED SO THAT PARAGRAPHS A THROUGH K REPRESENT THE “MUST TERMINATE” AND PARAGRAPHS L THROUGH U REPRESENT THE “MAY TERMINATE”. WHEN YOU GET TO PARAGRAPH L, YOU SHOULD PICK AND CHOOSE THOSE OPTIONS YOUR HOUSING AUTHORITY WANTS TO INCLUDE.]

*The PHA may at any time terminate program assistance for a participant because of any of the following actions or inactions by the household:*

- A. *If the family violates any family obligations under the program;*
- B. *If the family was evicted from housing assisted under the Section 8 program for serious violations of the lease;*
- C. *If a family member fails to sign and submit consent forms;*
- D. *If a family fails to establish citizenship or eligible immigrant status and is not eligible for or does not elect continuation of assistance, pro-ration of assistance, or temporary deferral of assistance. If the PHA determines that a family member has knowingly permitted an ineligible noncitizen (other than any ineligible noncitizens listed on the lease) to permanently reside in their Section 8 unit, the family’s assistance will be terminated. Such family will not be eligible to be readmitted to Section 8 for a period of 24 months from the date of termination;*
- E. *Have a household member who is currently engaging in illegal use of a drug;*
- F. *Have a household member whose pattern of illegal drug use interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents. The members of the household may not engage in drug-related criminal activity, other violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. The use of medical marijuana is included in this ban;*
- G. *Have a household member who has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing;*
- H. *Have a household member who is subject to a lifetime registration requirement under a State sex offender registration program;*

- I. *If any member of the family commits drug-related or violent criminal activity in violation of Section 2.3 of this Administrative Plan and 24 CFR 982.551;*
- J. *Have a household member whose abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents;*
- K. *Have a household member who is a fugitive felon, parole violator or person 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;*
- L. *Have a family member who violates any family obligations under the program;*
- M. *Have a family member who has been evicted from federally assisted housing in the last five years;*
- N. *Have a family member that PHA has ever terminated assistance for under the program;*
- O. *Have a family member that has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program;*
- P. *Currently owes rent or other amounts to the PHA or to another Housing Authority in connection with Section 8 or public housing assistance under the 1937 Act;*
- Q. *Have not reimbursed any Housing Authority for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease;*
- R. *Have breached an agreement with PHA to pay amounts owed to a Housing Authority, or amounts paid to an owner by a Housing Authority;*
- S. *If a family participating in the Family Self-Sufficiency Program fails to comply, without good cause, with the family's FSS Contract of Participation;*
- T. *Have engaged in or threatened abusive or violent behavior towards any PHA staff member or resident;*
- U. *Allowing someone not on the lease to use the resident's mailing address for any purpose will be considered admission that an unauthorized person is residing in the unit and will be grounds for termination from the program; and*
- V. *If a welfare-to-work (WTW) family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.*

*For purposes of this section, the PHA may terminate assistance for criminal activity by a household member as authorized in this section if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in the activity, regardless of whether the household member has been arrested or convicted of such activity.*

*An arrest record, alone, will not serve as sufficient evidence of criminal activity that can support a termination decision. Before the PHA terminates the assistance of 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 for criminal activity as shown by a criminal record, the PHA will notify the household of the proposed action to be based on the information and must provide the person with the criminal record (i.e., the family member) and the head of household with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record, in accordance with the procedures established for the Informal Hearing for Participants. The household will have ten 10 calendar days to dispute the accuracy and relevance of the record in writing.*

Any family absent from the assisted unit for more than **90** consecutive calendar days (180 is the maximum) must be terminated from the program.

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

- A. To whom the housing choice voucher was issued.*
- B. The interest of minor children or of ill, elderly, or disabled family members.*
- C. Whether the assistance should remain with the family members remaining in the unit.*
- D. Whether family members were forced to leave the unit as a result of actual or threatened physical violence by a spouse or other member(s) of the household.*



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

#### **15.1 THE EIV'S DECEASED TENANTS REPORT**

*The PHA shall generate the EIV's Deceased Tenants Report monthly shortly before disbursing HAP payments to owners 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, notify the owner in writing of the deceased Head of Household and suspend HAP payments for any month following the month in which the death occurred. If the property is occupied by a live-in-aide to the deceased person, the assistance will end and the landlord and aide must decide on the future of the aide's tenancy.*

*If an owner received HAP for any month in which the owner was ineligible to receive HAP because of a deceased tenant, the PHA will immediately notify the owner in writing of the ineligible HAP and require the owner to repay the overpayment within 30 days. If the owner does not comply, the PHA will deduct the amount due to the Agency from any amounts due to the owner under any other HAP contract. If there is no other HAP contract with the owner, the PHA may seek and obtain additional relief by judicial order or action in accordance with state and local laws.*

### **3. Termination of the HAP Contract by the PHA to the Owner:**

*The Housing Assistance Payment (HAP) contract is the primary document that governs the relationship between the owner of a unit in the HCV and PBV programs and the PHA. The HAP contract and HUD regulations at 24 CFR section 982.453 lay out the following as breaches of the contract by the owner (including a principal or other interested party such as a property manager):*

*“(1) If the owner has violated any obligation under the HAP contract for the dwelling unit, including the owner’s obligation to maintain the unit in accordance with the Housing Quality Standards (HQS).*

*(2) If the owner has violated any obligation under any other HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f).*

*(3) If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.*

*(4) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.*

*(5) If the owner has engaged in drug-related criminal activity.*

*(6) If the owner has committed any violent criminal activity.”*

*When the PHA determines the HAP contract is breached for HQS or other reasons, the PHA must take certain steps to comply with the HAP contract and program requirements. In the event of the breach of the HAP contract, the PHA must notify the owner in writing of the determination of the breach and the reasons for that determination. The notice may require the owner to take a corrective action by an established deadline. The PHA may recover any overpayment, suspend housing assistance payments, abate, or reduce the housing assistance payment, terminate the payment or terminate the HAP contract. The PHA may also obtain additional relief by judicial order or action, including specific performance, other injunctive relief, or order for damages. The PHA must provide the owner with written notice of any termination or reduction in housing assistance payments or the termination of the HAP contract.*

**4. When PHAs are Required to Exclude Owners from the HCV and PBV Programs:** *As mentioned above, PHAs have contractual remedies under the HAP contract for noncompliance, and, also can take proactive steps to prevent certain owners from participating in the HCV and PBV programs. Prior to PHA approval of the assisted tenancy and the execution of a HAP contract, the PHA must ensure the owner is eligible for the program per 24 CFR section 982.306. Consistent with 24 CFR 982.306(a) and (b), the PHA must not approve an owner’s participation in the program if:*

- The PHA is informed (by HUD or otherwise) that the owner is debarred, suspended,*

*or subject to a limited denial of participation under 24 CFR part 24;*

- *HUD directs the PHA not to approve the owner's participation in the program because the federal government has instituted an administrative or judicial action against the owner for a violation of the Fair Housing Act or other federal equal opportunity requirements, including, but not limited to, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, Violence Against Women Act, or the Americans with Disabilities Act, and such action is pending; and*

- *HUD directs the PHA not to approve an owner's participation in the program because a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, including, but not limited to, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, Violence Against Women Act, or the Americans with Disabilities Act.*

**6. When PHAs Have Discretion to Exclude Owners from their HCV and PBV Programs:** *PHAs can adopt policies that prospectively exclude owners from participating in their HCV and PBV programs. In adopting these policies, PHAs should consider the severity of the owner's previous infractions, whether it is a pattern or practice, and the potential impact on the PHA's HCV and PBV programs. Such policy must be adopted in the PHA's Administrative Plan in accordance with 24 CFR section 982.54(d)(8). Consistent with 24 CFR 982.306(c), the PHA may exclude owners from participating in the program for any of the following reasons:*

- *The owner has violated obligations under one or more HAP contracts under the HCV or PBV programs or any other housing program under Section 8 of the U.S. Housing Act of 1937;*

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

- *The owner is currently engaged in or has participated in recent drug-related criminal activity or violent criminal activity;*

- *The owner has or has had a practice of non-compliance with HQS in HCV or PBV program units or with applicable housing standards for units leased under any federal housing program;*

- *The owner has a history or practice of refusing to evict tenants assisted under the HCV or PBV programs or other federally assisted housing, for activity by the tenant, household member, a guest, or another person under the control of any member of the household that:*

- *Threatens the right to peaceful enjoyment of the premises by other residents or of persons residing in the immediate vicinity of the premises;*

- *Threatens the health or safety of residents, persons residing in the immediate vicinity of the premises, PHA employees, or owner employees engaged in*

*managing the housing; or*

*o Is currently engaged in drug-related criminal activity or violent criminal activity;*

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

*• The owner has not paid State or local real estate taxes, fines, or assessments.*

*PHAs are reminded that owners can adopt and implement alternative strategies to eviction to address tenant actions that are in breach of the lease agreement and use eviction as a last resort option to remedy noncompliance. PHAs should not discourage or otherwise penalize owners for using appropriate and effective means other than eviction, nor should PHAs discourage or otherwise penalize owners for considering the nature, severity, and recency of the offense, or any mitigating circumstances such as participation in substance use treatment services or other rehabilitative services, prior to moving to evict a tenant. When deciding whether to exclude an owner from participation for a history or practice of refusing to evict, PHAs should take into account whether an owner implements sound practices when determining whether to evict individuals based on criminal activity. Sound practices include but are not limited to relying on accurate and reliable objective evidence, conducting individualized assessments that consider mitigating factors, and considering the potential applicability of Violence Against Women Act (VAWA)'s housing protections for survivors of domestic violence, dating violence, sexual assault, and stalking. PHAs should also take into account whether an owner institutes policies or practices that promote eviction in a manner that gives rise to fair housing concerns.*

*In addition, if deciding whether to exclude an owner for participation in drug-related criminal activity or violent criminal activity, PHAs should consider the nature, severity, and recency of the offense, as well as any mitigating circumstances.*

***7. HUD Remedies for PHA Failure to Comply with Obligations under the HAP Contract:***  
*In most cases, PHAs are diligent in complying with their obligation under the HAP contract; however, there are circumstances that require HUD intervention. PHAs are required to follow, and have owners follow, the requirements of the United State Housing Act of 1937 as well as HUD regulations, the PHA's approved administrative plan, and HUD-approved funding applications.*

*HUD has several options in the case of a PHA's failure to comply with program requirements. HUD has the authority to reduce or offset the PHA's HCV administrative fee if the PHA fails to perform PHA administrative responsibilities correctly or adequately under the program (for example, PHA failure to enforce HQS requirements or to reimburse a receiving PHA promptly under portability procedures). If a PHA has not administered any Section 8 program correctly, HUD may also prohibit use of funds in the administrative fee reserve, and may direct the PHA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses.*

*HUD can also reduce HAP amounts to PHAs when PHAs fail to comply with the statutory or regulatory requirements. If HUD determines that the PHA has failed to comply with any*

*statutory or regulatory obligations, HUD may reduce to an amount determined by HUD the amount of any funding increment and/or the contract authority or budget authority for any funding increment. HUD must provide written notice and include a revised funding exhibit specifying the term, contract authority, and budget authority for each funding increment under the consolidated Annual Contributions Contract.*

*In relatively rare cases where HUD may view the PHA as having failed to take appropriate action to enforce the PHA's rights under the HAP contract, HUD could declare that the PHA is in default. These circumstances include when:*

- (1) The PHA has failed to comply with any statutory or regulatory obligations;*
- (2) The PHA has failed to comply with obligations under a HAP contract;*
- (3) The PHA has failed to take appropriate action, to HUD's satisfaction or as directed by HUD, for enforcement of the PHA's rights under a HAP contract; or*
- (4) The PHA has made any misrepresentation to HUD of any material fact. HUD must provide this determination in writing. In the case of default, HUD may take possession of all or any PHA property, rights, or interests in connection with a program, including funds held by a depository, program receipts, and rights or interests under a contract for HAP with an owner.<sup>14</sup> Finding a PHA is in default is a step that HUD only takes as a last resort. HUD works with PHAs using less stringent remedies before taking the step of finding PHAs in default. Nevertheless, it remains a possibility in egregious circumstances, and one that HUD does not waive by taking less stringent measures.*

*In addition to HUD remedies against PHAs, HUD may, where the PHA has properly enforced HQS regulations, appropriately documented and provided justification, initiate claims against the owner under the Program Fraud and Civil Remedies Act (PFCRA). The regulations pertaining to PFCRA can be found at (43 CFR 35.1 – 35.47).*

**8. Consideration of Remedies for PBV non-compliance:** *For projects considered "PHA-Owned," PHAs must follow all relevant requirements related to independent entities.*

*In the case of owners that fail to comply with program requirements, there are the variety of potential remedies that PHAs can take that are listed above in Section 4. For instance, if a PHA finds that a contract unit is not compliant with HQS, PHAs can adopt a variety of remedies such as termination, suspension or reduction of housing assistance payments, and termination of the HAP contract. While working towards voluntary compliance through education and technical assistance can be beneficial in some circumstances, PHAs may find the need at times to take more stringent measures. If the PHA fails to take action to enforce the HAP contract and program requirements, HUD can act as described in Section 7. HUD can also impose civil money penalties against an owner (under 24 CFR 30.68) or debarment/suspension (24 CFR 5.105(c), 2 CFR part 2424), and can also assume the PHA's rights and obligations under the contract (and perform such obligations and enforce such rights) if HUD determines that the PHA has failed to take appropriate action (per Section 14 of the PBV HAP contracts).*

## **COMPLAINTS, INFORMAL REVIEWS FOR APPLICANTS, INFORMAL HEARINGS FOR PARTICIPANTS**

### **COMPLAINTS**

*The PHA will investigate and respond to complaints by participant families, owners, and the general public. The PHA may require that complaints other than HQS violations be put in writing. Anonymous complaints are investigated whenever possible.*

### **INFORMAL REVIEW FOR THE APPLICANT**

#### **A. Informal Review for the Applicant**

*The PHA will give an applicant for participation in the Section 8 Existing Program prompt notice of a decision denying assistance to the applicant. The notice will contain a brief statement of the reasons for the PHA decision. The notice will state that the applicant may request an informal review within 10 business days of the denial and will describe how to obtain the informal review.*

#### **B. When an Informal Review is not Required**

*The PHA will not provide the applicant an opportunity for an informal review for any of the following reasons:*

- 1. A determination of the family unit size under the PHA subsidy standards.*
- 2. A PHA determination not to approve an extension or suspension of a housing choice voucher term.*
- 3. A PHA determination not to grant approval to lease a unit under the program or to approve a proposed lease.*
- 4. A PHA determination that a unit selected by the applicant is not in compliance with HQS.*
- 5. A PHA determination that the unit is not in accordance with HQS because of family size or composition.*
- 6. General policy issues or class grievances.*
- 7. Discretionary administrative determinations by the PHA.*

#### **C. Informal Review Process**

*The PHA will give an applicant an opportunity for an informal review of the PHA decision denying assistance to the applicant. The procedure is as follows:*

1. *The review will be conducted by any person or persons designated by the PHA other than the person who made or approved the decision under review or a subordinate of this person.*
2. *The applicant will be given an opportunity to present written or oral objections to the PHA decision.*
3. *The PHA will notify the applicant of the PHA decision after the informal review within 14 calendar days. The notification will include a brief statement of the reasons for the final decision.*

*D. Considering Circumstances*

*In deciding whether to deny assistance to an applicant because of action or inaction by members of the family, the Housing Authority may consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, and the effects of denial of assistance on other family members who were not involved in the action or failure.*

*The Housing Authority may impose, as a condition of assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. The Housing Authority may permit the other members of a participant family to receive assistance.*

*If the Housing Authority seeks to deny assistance because of illegal use, or possession for personal use, of a controlled substance, or pattern of abuse of alcohol, such use or possession or pattern of abuse must have occurred within one year before the date that the Housing Authority provides notice to the family of the Housing Authority determination to deny assistance. In determining whether to deny assistance for these reasons the PHA will consider evidence of whether the household member:*

1. *Has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol;*
2. *Has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol; or*
3. *Is participating in a supervised drug or alcohol rehabilitation program and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol.*

E. *Informal Review Procedures for Denial of Assistance on the Basis of Ineligible Immigration Status*

*The applicant family may request that the PHA provide for an informal review after the family has notification of the INS decision on appeal, or in lieu of request of appeal to the INS. The applicant family must make this request within 30 calendar days of receipt of the Notice of Denial or Termination of Assistance, or within 30 calendar days of receipt of the INS appeal decision.*

*For applicant families, the Informal Review Process above will be utilized with the exception that the applicant family will have up to 30 calendar days of receipt of the Notice of Denial or Termination of Assistance, or of the INS appeal decision to request the review.*

**INFORMAL HEARINGS FOR PARTICIPANTS**

A. *When a Hearing is Required*

1. *The PHA will give a participant family an opportunity for an informal hearing to consider whether the following PHA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations, and PHA policies:*

- a. *A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.*
- b. *A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule.*
- c. *A determination of the family unit size under the PHA subsidy standards.*
- d. *A determination to terminate assistance for a participant family because of the family's action or failure to act.*
- e. *A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under the PHA policy and HUD rules.*
- f. *Denial of a hardship exemption to the minimum rent requirement.*

2. *In cases described in paragraphs 16.3(A)(1)(d), (e), and (f) of this Section, the PHA will give the opportunity for an informal hearing before the PHA terminates housing assistance payments for the family under an outstanding HAP contract.*



*B. When a Hearing is not Required*

*The PHA will not provide a participant family an opportunity for an informal hearing for any of the following reasons:*

- 1. Discretionary administrative determinations by the PHA.*
- 2. General policy issues or class grievances.*
- 3. Establishment of the PHA schedule of utility allowances for families in the program.*
- 4. A PHA determination not to approve an extension or suspension of a housing choice voucher term.*
- 5. A PHA determination not to approve a unit or lease.*
- 6. A PHA determination that an assisted unit is not in compliance with HQS. (However, the PHA will provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family.)*
- 7. A PHA determination that the unit is not in accordance with HQS because of the family size.*
- 8. A determination by the PHA to exercise or not exercise any right or remedy against the owner under a HAP contract.*

*C. Notice to the Family*

- 1. In the cases described in paragraphs 16.3(A)(1)(a), (b), and (c) of this Section, the PHA will notify the family that the family may ask for an explanation of the basis of the PHA's determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.*
- 2. In the cases described in paragraphs 16.3(A)(1)(d), (e), and (f) of this Section, the PHA will give the family prompt written notice that the family may request a hearing within 10 business days of the notification. The notice will:*
  - a. Contain a brief statement of the reasons for the decision; and*
  - b. State if the family does not agree with the decision, the family may request an informal hearing on the decision within 10 business days of the notification.*

D. *Hearing Procedures*

*The PHA and participants will adhere to the following procedures:*

1. *Discovery*

- a. *The family will be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family will be allowed to copy any such document at the family's expense. If the PHA does not make the document(s) available for examination on request of the family, the PHA may not rely on the document at the hearing.*
- b. *The PHA will be given the opportunity to examine, at the PHA's offices before the hearing, any family documents that are directly relevant to the hearing. The PHA will be allowed to copy any such document at the PHA's expense. If the family does not make the document(s) available for examination on request of the PHA, the family may not rely on the document(s) at the hearing.*

*Note: The term **document** includes records and regulations.*

2. *Representation of the Family*

*At its own expense, a lawyer or other representative may represent the family.*

3. *Hearing Officer*

- a. *The hearing will be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.*
- b. *The person who conducts the hearing will regulate the conduct of the hearing in accordance with the PHA hearing procedures.*

4. *Evidence*

*The PHA and the family must have the opportunity to present evidence and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.*

5. *Issuance of Decision*

*The person who conducts the hearing must issue a written decision within 14 calendar days from the date of the hearing, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing.*

6. *Effect of the Decision*

*The PHA is not bound by a hearing decision:*

- a. *Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under this Section, or that otherwise exceeds the authority of the person conducting the hearing under the PHA hearing procedures.*
- b. *Contrary to HUD regulations or requirements, or otherwise contrary to Federal, State, or local law.*
- c. *If the PHA determines that it is not bound by a hearing decision, the PHA will notify the family within 14 calendar days of the determination, and of the reasons for the determination.*

E. *Considering Circumstances*

*In deciding whether to terminate assistance because of action or inaction by members of the family, the Housing Authority may consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.*

*The Housing Authority may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. The Housing Authority may permit the other members of a participant family to continue receiving assistance.*

*If the Housing Authority seeks to terminate assistance because of illegal use, or possession for personal use, of a controlled substance, or pattern of abuse of alcohol, such use or possession or pattern of abuse must have occurred within one year before the date that the Housing Authority provides notice to the family of the Housing Authority determination to deny or terminate assistance. In determining whether to terminate assistance for these reasons the PHA will consider evidence of whether the household member:*

1. *Has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol;*
2. *Has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol; or*
3. *Is participating in a supervised drug or alcohol rehabilitation program and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol.*

*F. Informal Hearing Procedures for Denial of Assistance on the Basis of 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. This request must be made by the participant family within 30 calendar days of receipt of the Notice of Denial or Termination of Assistance, or within 30 calendar days of receipt of the INS appeal decision.*

*For the participant families, the Informal Hearing Process above will be utilized with the exception that the participant family will have up to 30 calendar days of receipt of the Notice of Denial or Termination of Assistance, or of the INS appeal decision.*

## **QUALITY CONTROL OF SECTION 8 PROGRAM**

*In order to maintain the appropriate quality standards for the Section 8 program, the PHA will regularly (at least annually) review files and records to determine if the work documented in the files or records conforms to program requirements. This shall be accomplished by a supervisor or another qualified person other than the one originally responsible for the work or someone subordinate to that person. The number of files and/or records checked shall be at least equal to the number specified in the Section 8 Management Assessment Program (SEMAP) for our size housing authority.*

*Among the areas that shall have quality control reviews are the following:*

- A. The proper people were selected from the waiting list and their selection criteria were actually met by the applicants.*
- B. The determination of rent reasonableness.*
- C. Participants are paying the appropriate rent and their income and expenses were properly verified both upon admission and re-certification.*
- D. HQS inspections were properly made.*
- E. HQS deficiencies were properly followed up on and appropriate repairs were made in a timely manner.*
- F. Periodic monitoring of the EIV security requirements and use of the EIV system.*

*If significant errors are found during a quality control review, then appropriate training shall be immediately conducted for the person or persons who made the errors and that person shall correct all of his or her errors.*

## ***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 NHA and shall be part of the Administrative Plan. 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 NHA 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, the 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 a 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 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 the 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, the 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): \_\_\_\_\_  
\_\_\_\_\_

7. Relationship of the accused perpetrator to the victim: \_\_\_\_\_

8. Date(s) and times(s) of incident(s) (if known): \_\_\_\_\_

9. 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 you to 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): \_\_\_\_\_

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:** 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;
- (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
  - (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 childcare 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.

**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:**

(a) Annual income includes, with respect to the family:

- (1) All amounts, not specifically excluded in paragraph (b) (see also Excluded Income Definition) 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.

Annual Income also includes amounts derived (during the 12-month period) from assets to which any member of the family has access. (1937 Housing Act; 24 CFR 5.609)

**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 \$51,600, 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.) A family cannot be assisted if their total assets are in excess of \$103,200 on initial occupancy. See the chapter IV Section 4 for more information on assets.

**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 participants 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.*

**Day laborer:** *An individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future.*

**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 (which excludes 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.*

**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)

**Employment:** Employment for admission preference purposes is defined as:

Employment must have been held continuously for a minimum of **Three (3) months** within the twelve (12) month period prior to the time the preference is claimed and if not current the employment was terminated solely due to an involuntary layoff of the employee by the employer.

The amount of earned income shall not be a factor in granting this preference.

The employment part of this preference is also extended equally to (1) a family if the head, spouse, or sole member is 62 years of age or older or who is receiving social security or Supplemental Security Income disability benefits or any other payments based on the individual's inability to work and, (2) any family whose head, spouse, co-head or unrelated partner of head of household is currently a full time student or enrolled in an employment training program.

**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:

(i) An elderly person, displaced person, disabled person, near-elderly person, or any other single person;

(ii) 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, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; or

(2) A group of persons residing together, and such group includes, but is not limited to:

(i) 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);

(ii) An elderly family;

(iii) A near-elderly family;

(iv) A disabled family;

(v) A displaced family; and

The remaining member of a tenant family

**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.

**Foster adult.** A member of the household who is 18 years of age or older and meets the definition of a foster adult under State law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

**Foster child.** A member of the household who meets the definition of a foster child under State law. In general, a foster child is placed with the family by an authorized placement

agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.

**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))

**Health and medical care expenses.** Health and medical care expenses are any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed.

**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.*

**Independent contractor.** *An individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.*

**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 animals, transportation for medical purposes.

**Minor.** A member of the family, other than the head of family or spouse, who is under 18 years of age.

**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 the 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:**

(1) Net family assets is 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:

(vi) The value of necessary items of personal property;

(vii) The combined value of all non-necessary items of personal property if the combined total value does not exceed \$51600 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers);

(viii) 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;

(ix) 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; 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;

(x) 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.

(xi) Interests in Indian trust land;

(xii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982;

(xiii) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982;

(xiv) Family Self-Sufficiency Accounts; and

(xv) 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.

**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 as used in 24 CFR has the same meaning as that provided under the law of the State in which 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.

**Seasonal worker.** *An individual who is hired into a short-term position and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry*

**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 as calculated under 24 CFR Part 5.609 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 childcare 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>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>