

**Boone County Public Housing Agency  
2022-2023 Administrative Plans  
Effective 7/01/2023 to 09/30/2024**

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## **Chapter 1 – OVERVIEW OF THE PROGRAM AND PLAN**

### **Introduction**

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government through the U.S. Department of Housing and Urban Development Office of Public and Indian Housing and is administered by Boone County Public Housing Agency (BCPHA) dba Mid Missouri Public Housing Agency (MMPHA) for the jurisdiction of the following counties: Callaway, except for the city of Fulton, Cole, Cooper, Howard, Moniteau, and Osage.

The Boone County Public Housing Agency board is composed of one elected representative from each participating County Commissions (or a County Commission designee). The Boone County Public Housing Agency Residential Advisory Board is also composed of one member from each of our service counties, if available.

### **The HCV Board of Commission shall:**

- A. Adopt, amend, or repeal the rules and regulations governing the conduct of its business and the performance of its functions.
- B. Be responsible for the planning, study, development, and approval of the Boone County PHA Annual and Five-year housing plans for the improvement of housing conditions within the various counties and implementation of the Section 8 Housing Choice Voucher Program.
- C. Provide advice, liaison, assistance, and communication as needed to the Administrator of the Housing Choice Voucher Program.
- D. Be kept informed of the progress of the Housing Choice Voucher Program.
- E. Perform other duties as may, from time to time, be prescribed by the members and authorized under the laws of the State of Missouri.

### **The Resident Advisory Board (RAB)**

The Resident Advisory Board (RAB) provides the Boone County Public Housing Agency and its residents a forum for sharing information about the Boone County Public Housing Annual Plan. Section 511 of the United States Housing Act and the regulations in 24 CFR part 903 require that Public Housing Authorities (PHAs) establish one or more Resident Advisory Boards (RAB) as part of the PHA Plan process. RAB membership is comprised of individuals who reflect and represent the residents assisted by the PHA.

The role of the Resident Advisory Board (RAB) is to make recommendations and assist the Boone County Public Housing in the development of the Boone County Public Housing Annual Plan and any significant amendments or modifications to the plan that may be proposed during the year.

The Boone County Public Housing Resident Advisory Board (RAB) gives the Boone County Public Housing 's Section 8 Housing Choice Voucher program participants an opportunity to participate in guiding in programs and policies.

RAB duties are the following:

- Read and comment on changes to the Boone County Public Housing Agency policies.
- Review and comment on admin plan, five-year plan, etc.
- Make other recommendations to the Boone County Public Housing Board of Commissioners as necessary.

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

MMPHA contracts with Central Missouri Community Action (CMCA), a private, non-profit 501 (c) 3 corporation formed December 6, 1965. Our agency operates a network of six (6) Family Resource Centers, and MMPHA HCV covers 6 counties service area.

CMCA has extensive experience with managing and administering public funds from federal, state, and local funding sources as well as an established history of handling all financial transactions required by this program.

CMCA focuses on the people they serve, the communities in which they live, and the organization's capacity to be an agent of change through partnerships with other agencies within the communities that are served.

It is the mission of Boone County Public Housing Agency dba Mid Missouri Public Housing Agency to provide safe, clean, and affordable housing opportunities to individuals and families while promoting economic independence.

### **HISTORY OF THE HOUSING CHOICE VOUCHER PROGRAM**

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

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

The Housing and Community Development (HCD) Act of 1974 created a new federally assisted housing program-the Section 8 Existing program (also known as the Section 8 Certificate program). The HCD Act represented a significant shift in federal housing strategy from locally owned public housing to privately owned rental housing.

Under the Certificate program, federal housing assistance payments were made directly to private owners of rental housing when this housing was made available to lower-income families. Eligible families were able to select housing in the private rental market. Assuming,

that the housing met certain basic physical standards of quality (“housing quality standards”) and was within certain HUD-established rent limitations (“fair market rents”), the family would be able to receive rental assistance for the housing unit. Family contribution to rent was generally set at 30 percent of the family’s adjusted income, with the remainder of the rent paid by the program.

Another unique feature of the Certificate program was that the rental assistance remained with the eligible family, if the family chose to move to another privately-owned rental unit that met program requirements (in contrast to the public housing program and/or Project Based Voucher where the public rental assistance remains with the unit, should the family decide to move). Consequently, the Certificate program was characterized as tenant-based assistance, rather than unit-based assistance.

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

However, the Voucher program permitted families more options in housing selection. Rental housing still had to meet the basic housing quality standards, but there was no fair market rent limitation on rent. In addition, family contribution to rent was set at a limit of 30 percent of adjusted income. Consequently, depending on the actual rental cost of the unit selected, a family might pay more or less than 30 percent of their adjusted income for rent.

From 1987 through 1999, public housing agencies managed both the Certificate and Voucher tenant-based assistance programs, with separate rules and requirements for each. From 1994 through 1998, HUD published a series of new rules, known as “conforming” rules to more closely combine and align the two similar housing programs to the extent permitted by the law.

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

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

The transition of assistance from the Certificate and Voucher programs to the new HCV program began in October 1999. By October 2001, all families receiving tenant-based assistance were converted to the HCV program.

## **CHAPTER 2 - FAIR HOUSING AND EQUAL OPPORTUNITY**

Federal laws require PHAs to treat all applicants and participants equally, providing the same quality of service, regardless of family characteristics and background. Federal law prohibits discrimination in housing on basis of race, color, religion, sex, national origin, age, familial status, and disability. MMPHA will comply fully with all federal, state, and local

nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment.

### **MMPHA Policy**

MMPHA will carry out the public housing program of the agency in conformity with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 and will affirmatively further fair housing.

### **Housing Opportunity Through Modernization Act of 2016 (HOTMA)**

The Housing Opportunity Through Modernization Act (HOTMA) was signed into law on July 29, 2016, amending many aspects of Multifamily Housing programs (as well as programs administered through the Offices of Public and Indian Housing and Community Planning and Development). HOTMA was intended to streamline processes and reduce burdens on housing providers. On September 17, 2019, HUD issued a proposed rule to update its regulations according to HOTMA's statutory mandate. The final rule, published on January 9, 2023, considers public comment received on the proposed rule and provides additional guidance for implementing Sections 102, 103, and 104 of HOTMA.

- Section 102: Changes requirements related to income reviews for the Public Housing, Housing Choice Voucher (HCV), and Section 8 Project-Based Rental Assistance (PBRA) programs.
- Section 103: Modifies the continued occupancy standards of Public Housing residents (does not apply to Multifamily Housing programs).
- Section 104: Sets maximum asset limits for eligibility and continued assistance in the Public Housing, HCV, Section 8 PBRA programs.

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

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

### **Discrimination Complaints**

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

### **MMPHA Policy**

Applicants or participants who believe that they have been subject to unlawful discrimination may notify the PHA either orally or in writing. Within 10 business days of receiving the complaint, the MMPHA will provide a written notice to those alleged to have violated the rule. The MMPHA will also send a written notice to the complainant informing them that notice was sent to those alleged to have violated the rule, as well as information on how to complete and submit a housing discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

The MMPHA will attempt to remedy discrimination complaints made against the PHA and will conduct an investigation into all allegations of discrimination. Within 10 business days following the conclusion of the PHA's investigation, the PHA will provide the complainant and those alleged to have violated the rule with findings and either a proposed corrective action plan or an explanation of why corrective action is not warranted.

PHA will keep a record of all complaints, investigations, notices, and corrective actions for three years.

### **Definition of a Person with a Disability under Federal Civil Rights Laws [24 CFR Part 8.3 and 100.201]**

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

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

The phrase "physical or mental impairment" includes:

Any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal; organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitor-urinary; hemic and lymphatic; skin; and endocrine; or

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

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

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

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

**The definition of a person with disabilities does not include:**

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

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

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

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

**Verification of Disability**

The regulatory civil rights definition for persons with disabilities is provided. The definition of a person with disability for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of disability which is use for waiting list preferences and income allowances.

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

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

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

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

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability.
- The PHA must request only information necessary to evaluate the disability-related need for accommodation. The PHA will not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.
- In the event that the PHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the PHA will dispose of it. In place of the information, the PHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information.

### **Policies Related to Persons with Disabilities**

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

The PHA must ensure that persons with disabilities have full access to the PHA's programs and services. This responsibility begins with the first contact by an interested family and continues through every aspect of the program.



## **MMPHA Policy**

The MMPHA will ask all applicants and participants if they require any type of accommodations at the issuance of their voucher.

### **Reasonable Accommodation**

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

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

### **Types of Reasonable Accommodations**

When needed, the PHA must modify normal procedures to accommodate the needs of a person with disabilities. Examples include:

- Permitting applications and reexaminations to be completed by mail.
- Conducting home visits
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the PHA range) if the PHA determines this is necessary to enable a person with disabilities to obtain a suitable housing unit.
- Provide time extensions for locating a unit, when necessary, because of lack of availability of accessible units or special challenges of the family seeking a unit
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with PHA staff.
- Displaying posters and other housing information in locations throughout the PHA’s office in such a manner as to be easily readable from a wheelchair
- HOTMA (Housing Opportunity Through Modernization Act) creates hardship relief provision for childcare, health & medical care, and attendant care & auxiliary apparatus expense deductions.

### **Request for an Accommodation**

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

The family must explain what type of accommodation is needed to provide the person with the disability full access to the PHA’s programs and services.

If the need for the accommodation is not readily apparent or known to the PHA, the family must explain the relationship between the requested accommodation and the disability. There must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

**MMPHA Policy**

MMPHA encourages the family to make its request in writing. MMPHA will consider the accommodation any time the family indicates an accommodation is needed whether or not a formal written request is submitted.

**Approval/Denial of a Requested Accommodation**

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

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

Request for accommodations will be assessed on a case-by-case basis taking into account factors such as the cost of the requested accommodation and the financial resources of the PHA at the time of the requested accommodation.

**MMPHA Policy**

After a request for an accommodation is presented, the PHA will respond, in writing, within 10 business days.

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

If the PHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, the PHA will notify the family, in writing, of its determination within 10 business days from the date of the most recent discussion or communication with the family.

**Denial or Termination of Assistance**

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

When applicants with disabilities are denied assistance, the notice of denial must inform them of the PHA's informal review process and their right to request an informal review. In addition, the notice must inform applicants with disabilities of their right to request reasonable

accommodations to participate in the informal review process.

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

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

### **CHAPTER 3 - ELIGIBILITY**

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

#### **To be eligible for the HCV program the applicant family must:**

- Qualify as a family as defined by HUD and the PHA.
- Have income at or below HUD-specified income limits.
- Qualify on the basis of citizenship or the eligible immigrant family member as required.
- Provide social security number information for family members as required.
- Consent to the PHA's collection and use of family information as provided for in PHA provided consent forms.
- The PHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the PHA.

#### **This chapter contains three parts:**

Part I: Definitions of Family and Household Members: HUD and PHA definitions of family and household members and explain initial and ongoing eligibility issues related to these members.

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

Part III: Denial of Assistance: This part covers factors related to an applicant's past or current conduct that can cause the PHA to deny assistance.

#### **Definitions of Family and Household [24 CFR982.201 (c), HUD-50058 IB, p 13]**

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

## **Family**

To be eligible for assistance, an applicant must qualify as a family. Family also includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

1. A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or
2. A group of persons residing together, and such group includes, but is not limited to:
  - 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.
  - VII. Youth who are between the ages of 18 and 24 who have either left foster care or will leave foster care within 90 days, and who are homeless or at risk of becoming homeless at age 16 or older.

The PHA has the discretion to determine if any other group of persons qualifies as a family.

### **MMPHA Policy**

In addition to the above definitions, a family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law but who either can demonstrate they have lived together previously or certify that each individual's income and other resources will be available to meet the needs of the family.

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

## **Household**

Household is a broader term that includes additional people who, with the PHA's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

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

The PHA has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up. However, if a court determines the disposition of property between members of the assisted family in a divorce or separation decree, the PHA is bound by the court's determination of which family members continue to receive assistance.

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the PHA must ensure that the victim retains assistance.
- In accordance with Notice PIH 2017-08, for HUD–Veterans Affairs Supportive Housing (HUD–VASH) vouchers, when the veteran is the perpetrator of domestic violence, dating violence, sexual assault, or stalking, the victim must continue to be assisted. Upon

termination of the perpetrator's HUD-VASH voucher, the victim should be given a regular HCV if one is available, and the perpetrator's HUD-VASH voucher should be used to serve another eligible family. If a regular HCV is not available, the victim will continue to use the HUD-VASH voucher, which must be issued to another eligible family upon the voucher's turnover.

- If a court determines the disposition of property between members of the assisted family, the PHA is bound by the court's determination of which family members continue to receive assistance.

#### **MMPHA Policy**

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

In the absence of a judicial decision, or an agreement among the original family members, the PHA will determine which family retains their placement on the waiting list, or will continue to receive assistance taking into consideration the following factors: (1) the interest of any minor children, including custody arrangements, (2) the interest of any ill, elderly, or disabled family members, (3) the interest of any family member who is the victim of domestic violence, dating violence, sexual assault, or stalking, including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse; (4) any possible risks to family members as a result of criminal activity; and (5) the recommendations of social service professionals.

#### **Remaining Member of a Tenant Family [24 CFR 5.403]**

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

#### **Head of Household [24 CFR 5.504(b)]**

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

#### **MMPHA Policy**

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

### **Spouse, Co-head, and Other Adult**

A family may have a spouse or co head but not both [HUD 50058 IB, p13] Spouse means the marriage partner of the head of household. Co-head is an individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, but who is not a spouse. A family can only have one co head. Other adult means a family member, other than the head, spouse, or co head, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults.

### **Dependent [24 CFR 5.603]**

A dependent is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, cohead, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a dependent allowance.

### **Joint Custody of Dependents**

#### **MMPHA Policy**

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 50 percent or more of the time.

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

### **Full-Time Student [24 CFR 5.603; HCV GB, p. 5-29]**

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

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

### **Elderly and Near-Elderly Persons, and Elderly Family [24 CFR 5.100 and 5.403, FR Notice 02/03/12]**

#### **Elderly Persons**

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

## **Near-Elderly Persons**

A near-elderly person is a person who is 50-61 years of age.

## **Elderly Family**

An elderly family is one in which the head, spouse, cohead, or sole member is an elderly person. Identifying elderly families is important because elderly families qualify for the elderly family allowance.

## **Persons with Disabilities and Disabled Family [24 CFR 5.403]**

### **Persons with Disabilities**

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or co head is a person with disabilities. The PHA must make all aspects of the HCV program accessible to persons with disabilities and consider reasonable accommodations requested based upon a person's disability.

### **Disabled Family**

A disabled family is one in which the head, spouse, or co head is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income. Even though a person with drug and alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent the PHA from denying assistance for the reasons related to alcohol and drug abuse or from terminating assistance.

## **Guest [24 CFR 5.100]**

A guest is a person temporarily staying in the unit with the consent of a member of the household who has expressed or implied authority to so consent.

### **MMPHA Policy**

A guest can remain for no more than 15 Consecutive days during the term of the lease. Children who are subjective to a joint custody arrangement or for whom a family has visitation privileges and are not included as a family member because they live outside of the assisted household more than 50 percent of the time, are not subject to the time limits of a guest. A family may request an exception to this policy for a valid reason. An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

## **Foster Children and Foster Adults**

Foster adults are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone [24 CFR 5.609]. The term foster child is not specifically defined by the regulations. Foster children and foster adults living with an applicant or assisted family are considered household members but not family members. The income of foster children/adults is not counted

in family annual income, and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603 and HUD 50058 IB p 13].

**MMPHA Policy**

A foster child is a child who is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes under some kind of short-term or long-term foster care arrangement with the custodial agency. A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of HQS/NSPIRE space standards according to [24 CFR 982.401].

**Absent Family Members**

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

**MMPHA Policy**

An individual who is or is expected to be absent from the assisted unit for 60 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally, an individual who is or is expected to be absent from the assisted unit for more than 60 consecutive days is considered permanently absent and no longer a family member.

**Definitions of Temporarily and Permanently Absent**

**Absent Student**

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

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

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

**MMPHA Policy**

MMPHA will verify with the appropriate agency whether and when the child is expected to return to the home. Unless the agency confirms the child has been permanently removed from the home, the child will be counted as a family member.

**Absent Head, Spouse or Co head**

An employed head, spouse, or co head absent from the unit more than 60 consecutive days due to employment will continue to be considered a family member.



### **Family Members Permanently Confined for Medical Reasons**

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted.

#### **MMPHA Policy**

MMPHA will request verification from a responsible medical professional and will use this for determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence the family member is confined on a permanent basis and request the person not be considered a family member.

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

The family must request approval for the return of any adult family members the PHA has determined too permanently absent. The individual is subject to the eligibility and screenings requirements.

### **Live-in Aide**

Live-in aide means a person who resides with one or more elderly person(s), or near elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and the 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 [24 CFR 5.403].

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

A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations [24 CFR 5.609 (b)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. However, a relative who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family.

#### **MMPHA Policy**

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near elderly, or disabled family. For continued approval, the family must submit a new, written request-subject to PHA verification-at each annual reexamination.

In addition, the family and live-in aide will be required to submit a certification stating that the live-in aide is (1) not obligated for the support of the person(s) needing the care, and (2) would not be living in the unit except to provide the necessary supportive services.

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

- The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.
- The person commits drug-related criminal activity or violent criminal activity; or
- The person currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or Public Housing assistance under the 1937 Act.

Within 10 business days of receiving a request for a live-in aide, including all required documentation related to the request, the PHA will notify the family of its decision in writing.

### **Basic Eligibility Criteria**

#### **Income Limits**

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

#### **Definitions of the Income Limits [24 CFR 5.603(b)]**

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

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

Extremely low-income family: A family whose annual income does not exceed 30 percent of the median income for the area, adjusted for family size. HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

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

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

- A very low-income family
- A low-income family that has been "continuously assisted" under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act programs at the time family is admitted to the HCV program [24 CFR 982.4]
- A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173.

- A low-income or moderate-income family that is displaced as a result of the prepayment mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing as defined in 24 CFR 248.101.

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

**MMPHA Policy**

MMPHA will allow the four income eligible categories allowed by HUD and have not established any additional categories.

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

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

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

**Citizenship OR Eligible Immigration Status [24 CFR 5, Subpart E]**

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

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply.

**Declaration [24 CFR 5.508]**

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

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

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

### **MMPHA Policy**

Family members who declare citizenship or national status will not be required to provide additional documentation unless the PHA receives information indicating that an individual's declaration may not be accurate.

## **Eligible Noncitizens**

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

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

## **Ineligible Noncitizens**

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

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

## **Mixed Families**

A family is eligible for assistance as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered mixed

families. Such families will be given notice their assistance will be prorated and that they may request a hearing if they contest this determination.

**Ineligible Families [24 CFR 5.524(d), (e), and (f)]**

- Deemed any family ineligible to enter or remain in HUD assisted housing if they:
- Have more than \$100,000 in assets, adjusted annually for inflation
- Own a home
  - Unless the home is being purchased with a voucher, the family includes a person who is a victim of domestic violence, or the family is selling the home.

A PHA may elect to provide assistance to a family before the verification on the eligibility of the individual or one family member [24 CFR 5.512(b)]. Otherwise, no individual or family may be assisted prior to the affirmative establishment by the PHA that the individual or at least one family member is eligible. Verification of eligibility for this purpose occurs when the individual or family members submit documentation to the PHA in accordance with program requirements [24 CFR 5.512(a)].

**MMPHA Policy**

MMPHA will not provide assistance to a family before the verification of at least one family member. If the applicant family does not include any citizens, national, or eligible noncitizens the family will be sent a notice of denial. The notice will explain the reason(s) for denial and provide the family information for an informal hearing.

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

For new occupants joining the assisted family, the PHA must verify status at the first interim or regular reexamination following the person's occupancy, whichever comes first. If an individual qualifies for a time extension for the submission of required documents, the PHA must grant such an extension for no more than 30 days [24 CFR 5.508(h)]. Each family member is required to submit evidence of eligible status only one time during continuous occupancy.

**Social Security Numbers [24 CFR 5.216 and 5.218]**

For every family member, the family must provide documentation of a valid Social Security Number (SSN) or certification stating no SSN has been issued. If a child under age 6 has been added to an applicant family within 6 months prior to voucher issuance, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN within 90 days of the effective date of the initial HAP contract. If a new member is added to the family, the new member's SSN documentation must be submitted at the time they are added to the household. If any member of the family obtains a previously undisclosed SSN, or has been assigned a new SSN, the documentation must be submitted within ten days. The PHA must deny assistance to an applicant family if they do not meet the SSN disclosure, documentation and verification, and certification requirements contained in 24 CFR 5.216.

### **Family Consent to Release of Information [24 CFR 5.230]**

HUD requires each adult family member and the head of household, spouse, or co head, regardless of age, to sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

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

### **Students Enrolled in Institutions of Higher Education [24 CFR 5.612 and FR Notice 4/10/06]**

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

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

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

### **Definitions**

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

### **Dependent Child**

In the context of the student eligibility restrictions, dependent child means a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of dependent in 24 CFR 5.603, which states that the dependent must be a member of the assisted family, other than the head of household or spouse, who is under 18 years of age, is a person with a disability, or is a full-time student. Foster children and foster adults are not considered dependents.

## **Independent Student**

### **MMPHA Policy**

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

- The individual is of legal contract age under state law.
- The individual has established a household separated from his/her parents for at least one year prior to application for occupancy or if the individual meets one or more of the following criteria.
  - Be at least 24 years old by December 31 of the award year for which the aid is sought
  - Be an orphan, in foster care, or a ward of the court at any time when the individual was 13 years of age or older
  - The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual’s state of legal residence
  - Be a veteran of the U.S. Armed Forces or is currently serving on active duty for other than training purposes
  - Have one or more legal dependents other than a spouse
  - Be a graduate or professional student
  - Be married
- The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents’ most rent tax forms.
- The individual provides a certification of the amount of financial assistance that will be provided by this/her parents. The certification must be signed by the individual provide the support and must be submitted even if no assistance is being provided. The PHA will verify that a student meets the above criteria in accordance with policy.
- The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:
  - The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director
  - A financial aid administrator
- If the PHA determines that an individual meets the definition of a vulnerable youth such a determination is all that is necessary to determine that the person is an independent student for the purposes of using only the student’s income for determining eligibility for assistance.

### **Institution of Higher Education**

The PHA will use the statutory definition under section 102 of the Higher Education Act of 1965 to determine whether a student is attending an institution of higher education.

### **Parents**

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

### **Person with Disabilities**

The PHA will use the statutory definition under section 3(b)(3)(E) of the 1937 Act to determine whether a student is a person with disabilities.

### **Veteran**

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

### **Vulnerable Youth**

A vulnerable youth is an individual who meets the U.S. Department of Education's definition of independent student in paragraphs (b), (c), or (h), as adopted in Section II of FR Notice 9/21/16:

- The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older.
- The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence.
- The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:
  - A local educational agency homeless liaison.
  - The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director.
  - A financial aid administrator.

### **Determining Student Eligibility**

If a student is applying for assistance on his/her own, apart from his/her parents, the PHA must determine whether the student is subject to the eligibility restrictions contained in 24 CFR 5.612. If the student is subject to those restrictions, the PHA must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from his/her parent or



the student's parents are income eligible for the program, and (3) the family with which the student is applying is collectively eligible for the program.

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

- Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program
- Determine whether the student is independent from his/her parents in accordance with the definition of independent student in this section.
- Follow the policies below, if applicable, in determining whether the student's parents are income eligible for the program
- If the PHA determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, the PHA will send a notice of denial in accordance with policy, and the applicant family will have the right to request an informal review.

**Determining Parental Income Eligibility**

For any student who is subject to the 5.12 restrictions and who does not satisfy the definition of independent student in this section, the PHA will determine the income eligibility of the student's parents as follows:

- If the student's parents are married and living together, the PHA will obtain a joint income declaration and certification of joint income from the parents.
- If the student's parent is widowed or single, the PHA will obtain an income declaration and certification of income from that parent.
- If the student's parents are divorced or separated, the PHA will obtain an income declaration and certification from each parent.
- If the student has been living with one of his/her parents and has not had contact with or does not know where to contact his/her other parent, the PHA will require the student to submit a certification under penalty of perjury describing the circumstances and stating that the student does not receive financial assistance from the other parent.
- The PHA will obtain an income declaration and certification of income from the parent with whom the student has been living or had contact.

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

**Denial of Assistance**

A family that does not meet the eligibility criteria of family/household members or basic eligibility must be denied assistance.

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

**Forms of Denial [24 CFR 982.552 (a) (2)];** Denial of assistance includes any of the following:

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

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

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

- Age, disability, race, color, religion, sex, or national origin.
- Where a family lives prior to admission to the program.
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the PHA's jurisdiction under portability.
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock.
- Whether the family includes children.
- Whether a family decides to participate in a family self-sufficiency program.
- Whether or not a qualified applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking if the applicant is otherwise qualified for assistance.

**Mandatory Denial of Assistance [24 CFR 982.553(a)]**

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

1. Any member of the household has been evicted from federally assisted housing the last 3 years for drug-related criminal activity.

HUD permits, but does not require, the PHA to admit an otherwise-eligible family if the household member has completed a PHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist.

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

**MMPHA Policy**

The PHA will admit an otherwise-eligible family who was evicted from federally assisted housing within the past 3 years for drug-related criminal activity, if the PHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the PHA, or the person who committed the crime is no longer in the household.

“Currently engaged in” is defined as any use of illegal drugs during the previous six months.

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

#### **MMPHA Policy**

In determining reasonable cause, the PHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. The PHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

- Any household member has ever been convicted or drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing.
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.

#### **Other Permitted Reasons for Denial of Assistance**

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

#### **Criminal Activity [24 CFR 982.553]**

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

#### **MMPHA Policy**

- If any household member is currently engaged in, or has engaged in, any of the following criminal activities within the past 3 years, the family will be denied assistance:
- Drug-related criminal activity, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute, or use the drug. [24 CFR 5.100]
- Violent criminal activity, defined by HUD as any criminal activity having as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].
- Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity (meaning within a three-block radius of the premises). In the case of a peace disturbance, applicants must provide a detailed police report describing the severity of the situation. MMPHA will review and determine eligibility on a case-by-case basis. If the applicant refuses or does not provide the requested police

report within the given time frame, the MMPHA will automatically deny the application.

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

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

- Any conviction for drug-related or violent criminal activity within the past 3 years.
- Any arrest for drug-related or violent criminal activity within the past 3 years.
- Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 3 years.

A conviction for drug-related or violent criminal activity will be given more weight than an arrest for such activity.

In making its decision to deny assistance, the PHA will consider the factors discussed. Upon consideration of such factors, the PHA may, on a case-by-case basis, decide not to deny assistance.

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

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

**MMPHA Policy**

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

- The family does not provide information the PHA, or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to the PHA
- Any family member has been evicted from federally assisted housing in the last 3 years.
- Any family member has committed fraud, bribery, or any other corrupt criminal act in connection with any federal housing program.
- The family owes rent or other amounts to any PHA in connection with the HCV, Certificate, public housing programs unless the family repays the full amount of the debt prior to being selected from the waiting list.
- A family member has engaged in or threatened violent or abusive behavior toward PHA personnel.
- If the family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being selected from the waiting list.

The family has breached the terms of a repayment agreement entered into with the

PHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.

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

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

Threatening refers to oral or written threats or physical gestures that communicate the intent to abuse or commit violence. In making its decision to deny assistance the PHA may, on a case-by-case basis, decide not to deny assistance.

## **Screening**

### **Screening for Eligibility**

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

#### **MMPHA Policy**

Criminal/Drug background checks are conducted on every household member aged eighteen (18) and over. This is currently being completed through Case.Net, State of Missouri Highway Patrol database for Sexual Offenders and the Dru Sjodin National Sexual Offender Public Website. This may also include social media and public resources available to the PHA. PHAs are required to perform criminal background checks necessary to determine whether any household member is a subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 982.553 (a)(2)(i)].

If the PHA proposes to deny assistance based on a criminal record or lifetime sex offender registration information, the PHA must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to denial of admission. [24 CFR 5.903(f) and 5.905(d)].

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

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

### **MMPHA Policy**

MMPHA will not conduct additional screening to determine an applicant family's suitability for tenancy.

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

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

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

### **MMPHA Policy**

MMPHA will inform owners of their responsibility to screen prospective tenants and will provide owners with the required known name and address information at the time of the initial HQS/NSPIRE inspection or before. The PHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

### **Criteria for Deciding to Deny Assistance Evidence [24 CFR 982.553 (c)]**

The PHA will use the concept of preponderance of the evidence as the standard for making all admission decisions.

"Preponderance of the evidence" is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that which as a whole shows the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

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

HUD authorizes the PHA to consider all relevant circumstances when deciding whether to deny assistance based on a family's past history except in the situations for which denial of assistance is mandated.

### **MMPHA Policy**

MMPHA will consider the following factors prior to making its decision:

- The seriousness of the case, especially with respect to how it would affect other residents' safety or property.
- The effects that denial of assistance may have on other members of the family who were not involved in the action or failure to act.
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities a victim of domestic violence, dating violence, sexual assault, or stalking.
- The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future.
- While a record of arrest(s) will not be used as the basis for denial, an arrest may, however, trigger an investigation to determine whether the applicant actually engaged in disqualifying criminal activity. As part of its investigation, the PHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PHA may also consider any statements made by witnesses or the applicant not included in the police report.
- Whether criminal charges were filed.
- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal.
- Any other evidence relevant to determining whether or not the applicant engaged in disqualifying activity.
- Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.
- In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully.

### **MMPHA Policy**

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

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

Should the PHA's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must deny admission to the family.

For other criminal activity, the PHA may permit the family to exclude the culpable family members as a condition of eligibility.

**MMPHA Policy**

As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify the family member will not be permitted to stay as a guest in the assisted unit. After admission to the program, the family must present evidence of the former family member's current address upon PHA request.

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

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

**MMPHA Policy**

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

**Notice of Eligibility or Denial**

If the family is eligible for assistance, the PHA will notify the family in writing and schedule a tenant briefing.

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

**MMPHA Policy**

The family will be notified of a decision to deny assistance in writing within 10 business days of the determination.

If a PHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the PHA can move to deny the application. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)]. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.5539d)].



### **MMPHA Policy**

If, based on a criminal record or sex offenders' registration information, an applicant family appears to be ineligible the PHA will notify the family in writing of the proposed denial and provide a copy of the record to the applicant and to the subject of the record. The family will be given 10 business days from the date of the letter to dispute the accuracy and relevance of the information. If the family does not contact the PHA to dispute the information within that 10-day period, the PHA will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter, will still be given the opportunity to do so as part of the informal review process.

### **Prohibition against Denial of Assistance to Victims of Domestic**

#### **Violence, Dating Violence, Sexual Assault, and Stalking [PUB.L. 109-162]**

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

### **Notification**

VAWA expanded notification requirements to include the obligation for PHAs to provide applicants who are denied assistance with a VAWA Notice of Occupancy Rights (form HUD-5380) and a domestic violence certification form (HUD-5382) at the time the applicant is denied.

### **MMPHA Policy**

The PHA acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, poor rental history, a record of previous damage to an apartment, a prior arrest record) due to adverse factors that would warrant denial under the PHA's policies.

While the PHA is not required to identify whether adverse factors that resulted in the applicant's denial are a result of domestic violence, dating violence, sexual assault, or stalking, the applicant may inform the PHA that their status as a victim is directly related to the grounds for the denial. The PHA will request that the applicant provide enough information to the PHA to allow the PHA to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim.

The PHA will include in its notice of denial the VAWA as well as including a copy of the form HUD-5382. The PHA will request in writing that an applicant wishing to claim protection under VAWA notify the PHA within 14 business days.

## **Documentation**

### **Victim Documentation**

#### **MMPHA Policy**

When a tenant family is facing lease termination because of the actions of a tenant, household member, guest or other person under the tenant's control and a tenant or immediate family member of the tenant's family claims that he or she is the victim of such actions and that the actions are related to domestic violence, dating violence, or stalking, MMPHA will require the individual to submit documentation affirming that claim.

#### **Victim Documentation must include:**

1. A signed statement by the victim that provides the name of the perpetrator and certifies that the incidents in question are factual incidents of domestic violence, dating violence, or stalking.
2. A police or court record documenting the actual or threatened abuse, or

A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are factual incidents of abuse, and the victim must sign or attest to the statement.

The required certification, HUD form 5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and supporting documentation must be submitted to MMPHA within 14 business days after the individual claiming victim status receives a request for such certification. MMPHA and the owner/manager are aware the delivery of the certification form to the tenant in response to an incident via mail may place the victim at risk. MMPHA will require the tenant to come into the office to pick up the certification form and will work with the tenant to make arrangements that do not place the tenant at risk. This 14-day deadline may be extended at MMPHA's discretion. If the individual does not provide the required certification and supporting documentation within 14 business days, or the approved extension period, MMPHA may proceed with assistance termination.

#### **Perpetrator Documentation must include:**

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

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

Documentation that the perpetrator has successfully completed, or is successfully

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

### **PHA Confidentiality Requirements**

All information provided to MMPHA regarding domestic violence, dating violence, or stalking, including the fact an individual is a victim of such violence or stalking, must be retained in confidence and may not be entered into any shared data base nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

## **Chapter 4 – APPLICATIONS, WAITING LIST AND TENANT SELECTION**

### **Applying for Assistance**

Each interested family or individual will be asked to complete a pre-application furnished by MMPHA. The pre-application are available at CMCA Family Resource Centers located near the six (6) counties where the program is available; it may also be found on the CMCA web page, [www.cmca.us](http://www.cmca.us) where you can print the pre-application and return it to our office, or it can be obtained by calling the office of the MMPHA so one can be mailed to the interested applicant.

Pre-applications must be returned by mail or in person to the MMPHA office located at 800 N. Providence Rd, Columbia, MO 65203. Faxes and emails are only permitted if from any CMCA county offices.

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

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

Pre-applications must be returned complete in order to be accepted by the PHA for processing. If a pre-application is incomplete, the PHA will reject the pre-application. For a pre-application to be considered complete all pages requiring a signature must be signed. The applicant must also

provide copies of birth certificates and social security cards for all household members and for everyone age eighteen (18) and older, a photo ID is required.

Applicants will be placed on the waiting list according to any preference(s) for which they qualify, and the date and time their complete pre-application is received by the PHA.

The PHA must accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance) for grounds stated in the regulations [24 CFR 982.206 (b)(2)]. Where the family is determined to be ineligible the PHA must notify the family in writing [24 CFR 982.201 (f)]. Where the family is not determined to be ineligible, the family will be placed on a waiting list of applicants.

No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list. [24 CFR 982.202 (c)]

#### **MMPHA Policy**

If the PHA determines that a family is ineligible the PHA will send written notification of the ineligibility determination within 10 business days of the required screenings. The notice will specify the reason(s) for ineligibility and will inform the family of its rights to request an informal review and explain the process for doing so.

Placement on the waiting list does not indicate the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list.

Applicants will be placed on one wait list for the jurisdiction of the PHA by the date and time the completed application was received and according to PHA preferences, if any, that apply.

#### **Organization of the Waiting List [24 CFR 982.204 and 205]**

The PHA's HCV waiting list must be organized in such a manner as to allow the PHA to accurately identify and select families for assistance in the proper order, according to the admissions policies described in this plan.

#### **The waiting list must contain the following information for each applicant listed:**

- Applicant name
- Family unit size
- Date and Time of application
- Qualification for any local preference
- Racial or ethnic designation of the head of household

HUD requires the PHA to maintain a single waiting list for the HCV program unless it serves more than one county or municipality. Such PHAs are permitted, but not required, to maintain a separate waiting list for each county or municipality served.

### **MMPHA Policy**

MMPHA will maintain a single waiting list for the following HCV program:  
MMPHA will maintain a single waiting list for the VASH Program, Mainstream, Foster Youth Initiative, Port IN clients, and Homelessness.

### **Opening and Closing the Waiting List [24 CFR 982.206]**

#### **Closing the Waiting list**

A PHA is permitted to close the waiting list if the PHA determines the existing waiting list contains an adequate pool for use of available program funding. The PHA may stop accepting new applications or may accept only applications meeting criteria adopted by the PHA.

The PHA will close the waiting list when the estimated waiting period for housing assistance for applicants on the list reaches 24 months.

#### **MMPHA Policy**

MMPHA will announce by public notice the closing of the waiting list. Notice will be published in the 2 major newspapers in the service area, will be posted at each Resource Center, and on the CMCA agency website, that, until further notice, applications will no longer be accepted. Such notice will be provided 10 business days prior to the actual discontinuation of taking applications.

The 2 major newspapers to be used are the Jefferson City News Tribune and the Boonville Daily News.

#### **Reopening the Waiting List**

If the waiting list has been closed, it cannot be reopened until the PHA publishes a notice in local newspapers of general circulation, minority media, and other suitable outlets. The notice must comply with HUD fair housing requirements and must specify who may apply and where and when applications will be received.

#### **MMPHA Policy**

MMPHA will announce, by public notice, the opening of the waitlist. This will follow the same procedure as closure of the list. Notice will be published in the 2 major newspapers in the service area, will be posted at each CMCA Resource Center, and on the CMCA agency website stating MMPHA will begin accepting applications in 10 business days.

The 2 major newspapers to be used are the Jefferson City News Tribune and the Boonville Daily News.

#### **Family Outreach**

The PHA must conduct outreach as necessary to ensure the PHA has sufficient number of applicants on waiting list to use the HCV resources it has been allotted.

Because HUD requires the PHA to serve a specified percentage of extremely low families, the PHA may need to conduct special outreach to ensure an adequate number of such families apply for assistance.

**PHA Outreach Must Comply with Fair Housing Requirements. This includes:**

- Analyzing the housing market area and the populations currently being served to identify underserved populations.
- Ensuring outreach efforts are targeted to media outlets that reach eligible populations which are underrepresented in the program.
- Avoiding outreach efforts that prefer or exclude people who are members of a protected class PHA outreach efforts must be designed to inform qualified families about the availability of assistance under the program. These efforts may include, as needed, any of the following activities:
  - Submitting press releases to local newspapers, including minority newspapers
  - Developing informational materials and flyers to distribute to other agencies.
  - Providing application forms to other public and private agencies serving low-income populations
  - Developing partnerships with other organizations that serve similar populations, including agencies that provide services to people with disabilities.

**MMPHA Policy**

Examples of MMPHA outreach, if needed, will include various media as deemed necessary.

Clients who utilize the CMCA family development services will be informed of the housing assistance program as part of their initial intake.

MMPHA will hold discussions with concerned citizens, agency & program participants, landlords/owners/agents, other social service agencies and their staff.

A brochure is given to all interested parties explains how HCV Section 8 Rental Assistance works and answers the most frequently asked questions.

**Reporting Changes in Family Circumstances**

MMPHA requires that an applicant family on the waiting list must immediately inform MMPHA of any changes in their contact information including current residence, mailing address, and phone number. The change must be submitted in writing.

**Updating the Waiting List [CRF 24 982.204]**

HUD requires the PHA to establish policies to use when removing applicants' names from the waiting list.

**Purging the Waiting List**

The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to a PHA

request for information or updates because of the family member's disability, the PHA must reinstate the applicant family to their former position on the waiting list [24 CFR 982.204 (c) (2)]

The PHA will update the waiting list at least annually to ensure all applicant contact information is current.

### **MMPHA Policy**

To update the waiting list, MMPHA will contact all families on the waiting list by first class mail at least annually to see if they are still interested in the program unless the oldest application on the wait list is 18 months old or less. This contact letter will be sent to the last known address MMPHA has on record for the family. The contact letter will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

The family's response must be in writing and may be delivered in person or by mail to the address provided on the notice. No phone call responses will be accepted. Responses must be postmarked or received by the PHA no later than the deadline stated in the PHA letter.

If the family fails to respond within the specified deadline stated on the letter, the family will be removed from the waiting list without further notice.

If the letter is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be resent to the address indicated. The family will have 15 business days to respond from the date the letter was re-sent.

If a family is removed from the waiting list for failure to respond, the PHA may reinstate the family if he/she determines the lack of response was due to PHA error, or to circumstances beyond the family's control.

### **Removal from the Waiting List**

If, at any time while an applicant's family is on the waiting list, the PHA determines the family is not eligible for assistance, the family will be removed from the waiting list.

If a family is removed from the waiting list because the PHA has determined the family is not eligible for assistance, a notice will be sent to the family's address of record provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding the PHA's decision [24 CFR 982.201(f)].

### **Selection for HCV Assistance**

As vouchers become available, families on the waiting list must be selected for assistance in accordance with the policies described in this part.

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

The PHA must maintain a clear record of all information required to verify the family is selected from the waiting list according to the PHA's selection policies [24 CFR 982.204(b) and 982.207 (e)].

### **Special Admissions [24 CFR 982.203]**

HUD may award funding for specifically named families living in specified types of units (e.g., a family that is displaced by demolition of public housing; a non-purchasing family residing in a HOPE 1 or 2 projects). In these cases, the PHA may admit such families whether or not they are on the waiting list, and, if they are on the waiting list, without considering the family's position on the waiting list. These families are considered non-waiting list selections. The PHA must maintain records showing that such families were admitted with special program funding.

### **Targeted Funding [24 CFR 982.204(e)]**

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

### **Regular HCV Funding**

Regular HCV funding may be used to assist any eligible family on the waiting list. Families are selected from the waiting list according to the PHA policies.

#### **MMPHA Policy**

As vouchers become available, MMPHA will notify the next applicant(s) on the waiting list to attend a briefing where they will complete required forms for verification.

### **Selection Method**

PHAs must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the PHA will use [24 CFR 982.202(d)].



### **Local preferences [24 CFR 982.207]**

PHAs are permitted to establish local preferences and to give priority to serving families meeting those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits the PHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the PHA plan and the consolidated plan and must be based on local housing needs and priorities that can be documented by generally accepted data sources.

#### **MMPHA currently uses the following local preferences:**

- Participants who, due to lack of sufficient funding from HUD, are terminated from participating in the program. (i.e., the first tenant drawn to be taken off the program will be placed first on the waiting list.)
- The PHA will offer a preference to families that include victims of domestic violence, dating violence, sexual assault, or stalking who have either been referred by a partnering service agency or consortia or is seeking an emergency transfer under VAWA from the PHA's public housing program or other covered housing program operated by the PHA. The applicant must certify that the abuser will not reside with the applicant unless the PHA gives prior written approval.

The PHA will first assist families that have been terminated from the HCV program due to insufficient funding and then assist families that qualify for the VAWA preference.

- Verifiably Homeless as defined by most current HUD regulations.
- Verifiably in a Domestic Violence Shelter
- Resident of a Federally Declared Natural Disaster Area
- Resident of a State Declared Natural Disaster Area
- Participant of Foster Youth Initiative that is being removed due to age criteria.
- Participant of the Mainstream program that has reached the maximum age requirements.

### **Order of Selection**

The PHA system of preferences may select families either according to the date time of the application, or by a random selection process [24 CFR 982.207 (c)]. When selecting families from the waiting list PHAs are required to use targeted funding to assist only those families who meet the specified criteria, and PHAs are not permitted to skip down the waiting list to a family it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204 (d) and (e)].

#### **MMPHA Policy**

MMPHA selects families for the waiting list by the date and time the completed application was received. If the family has qualified for a local preference, they may be selected from the waiting list ahead of a higher placed family that does not qualify for the local preference. All local preference applicants will be selected in numerical order based on the date and time, the completed application was received.

## **Notification of Selection**

When a family has been selected from the waiting list, the PHA must notify the family.

### **MMPHA Policy**

MMPHA will notify the family by first class mail when it is selected from the waiting list. The notice will inform the family of the following:

- Date, Time, and Location of the scheduled briefing
- Who is required to attend the briefing
- Documents that must be provided at the briefing to document the legal identity of household members, including information about what constitutes an acceptable documentation
- Other documents and information that should be brought to the briefing.

If the briefing letter is returned to MMPHA with no forwarding address, the family will be removed from the waiting list. If the returned letter has forwarding address the briefing letter will be forwarded.

## **Chapter 5 - BRIEFINGS AND VOUCHER ISSUANCE**

When a family is determined to be eligible for the Housing Choice Voucher (HCV) program, the PHA must ensure that the family fully understands the way the program operates and the family's obligations under the program. This is accomplished through both an oral briefing and provision of a briefing packet containing the HUD-required documents and other information the family needs to know in order to lease a unit under the program. Once the family is fully informed of the program's requirements, the PHA issues the family a voucher. The voucher includes the unit size for which the family qualifies based on the PHA's subsidy standards, as well as the issue and expiration date of the voucher. The voucher is the document that authorizes the family to begin its search for a unit and limits the amount of time the family has to successfully locate an acceptable unit.

Part I: Briefings and Family Obligations. This part details the program's requirements for briefing families orally, and for providing written materials describing the program and its requirements. It includes a particular focus on the family's obligations under the program.

Part II: Subsidy Standards and Voucher Issuance. This part discusses the PHA's standards for determining how many bedrooms a family of a given composition qualifies for, which in turn affects the amount of subsidy the family can receive. It also discusses the policies that dictate how vouchers are issued, and how long families have to locate a unit.

### **Briefings and Family Obligations Overview**

HUD regulations require the PHA to conduct mandatory briefings for applicant families who qualify for a voucher. The briefing provides a broad description of owner and family responsibilities, explains the PHA's procedures, and includes instructions on how to lease a unit. This part describes how oral briefings will be conducted, specifies what written

information will be provided to families, and lists the family's obligations under the program. The PHA must give the family an oral briefing and provide the family with a briefing packet containing written information about the program. Families may be briefed individually or in groups. At the briefing, the PHA must ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973) and ensure that the briefing site is accessible to individuals with disabilities.

**MMPHA Policy**

Briefings will be conducted in group meetings or on a one-on-one basis, including via email and U.S. Mail.

The head of household and any household member 18 years old are required to attend the briefing.

Families that attend group briefings and still need individual assistance will be referred to an appropriate PHA staff person.

Briefings will be conducted in English. For limited English proficient (LEP) applicants, the PHA will provide translation services in accordance with the PHA's LEP plan.

**Notification and Attendance**

Families will be notified of their eligibility for assistance at the time they are invited to attend a briefing. The notice will identify who is required to attend the briefing, as well as the date and time of the scheduled briefing.

If the notice is returned by the post office with no forwarding address, the applicant will be denied, and their name will not be placed back on the waiting list. If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated.

Applicants who fail to attend a scheduled briefing will be scheduled for another briefing automatically. The PHA will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without prior PHA approval, will be denied assistance.

**MMPHA Policy**

MMPHA requires that families selected from the waiting list to attend the briefing. All members of the household age 18 and over are required to attend the briefing. The family must provide all required documentation necessary to establish the family's eligibility and determine the appropriate level of assistance, as well as completing required forms, providing required signatures and submitting required documentation. If any information is missing MMPHA will provide a written list of items that must be submitted. Any required documents or information the family is unable to provide at the briefing appointment must be provided within 10 business days of the briefing. If the required documents and information are not provided within the required time frame, plus any extensions, the family will be sent a notice of denial.

An in-depth briefing to all applicants will be conducted by the Housing Services Specialists or Housing Program Manager.

If a large number of applicants are coming off the waiting list at one time, this briefing will be completed as a group. If the family is unable to attend a scheduled briefing, the family should contact the PHA in advance of the briefing to schedule a new appointment. In all circumstances, if a family does not attend a scheduled briefing, the PHA will send another notification letter with a new briefing appointment date and time OR advising the family to contact our office within 10 calendar days to set up an appointment. If the family fails to respond to the PHA within the required timeframe, then the family application will be denied, and the family will be removed from the waiting list. Applicants who fail to attend two scheduled briefings without PHA approval will be denied assistance based on the family's failure to supply information needed to determine eligibility.

### **Oral Briefing**

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works.
- Family and Owner responsibilities.
- Where the family can lease a unit, within the PHA's jurisdiction.
- Full explanation of the PHA jurisdiction and its portability procedures, the briefing must include an explanation of how portability works. The PHA may not discourage the family from choosing to live anywhere in the PHA jurisdiction, or outside the PHA jurisdiction under portability, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order.
- The PHA must inform the family of how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance.
- The advantages of areas that do not have a high concentration of low-income families, and.
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

### **Briefing Packet [24 CFR 982.301(b)]**

Documents and information provided in the briefing packet must include the following:

- The term of the voucher,
- The PHA's policies on any extensions or suspension of the term.
- If the PHA allows extension, the packet must explain how the family can request an extension.
- A description of the method used to calculate the housing assistance payment for a family, including how the PHA determines the payment standard for a family, how the PHA determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.

- An explanation of how the PHA determines the maximum allowable rent for an assisted unit.
- Where the family may lease a unit. For a family that qualifies to lease a unit outside the PHA jurisdiction under portability procedures, the information must include an explanation of how portability works.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy, and a description of the procedure for requesting approval for tenancy.
- The PHA subsidy standard including when and how exceptions are made.
- The HUD brochure on how to select a unit.
- The HUD pamphlet on lead-based paint entitled Protect Your Family from Lead in Your Home.
- Information on federal, state, and local equal opportunity laws and a copy of the housing discrimination compliant contact information.
- A list of landlords or other parties willing to lease to assisted families or help families find units, especially outside areas of poverty or minority concentration.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to the PHA.
- The family obligations under the program, including any obligations of a welfare to-work family.
- The grounds on which the PHA may terminate assistance for a participant family because of family action or failure to act.
- PHA informal hearing procedures including when the PHA is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing. The contents and purpose of each item in the briefing packet will be explained.

**MMPHA Policy**

Because part of the MMPHA jurisdiction is in a metropolitan area the briefing packet will include additional information on Expanding Housing Opportunities [24 CFR 985.3(g)].

Additional information includes:

- Maps showing areas with housing areas outside areas of poverty or minority concentration.
- Information about services and assistance available through CMCA, i.e.: Weatherization, Energy Assistance, Head Start. Participation in these programs is encouraged so that families can achieve self-sufficiency.
- Information about services and programs offered through other social services programs, i.e.: family support division, child support enforcement, county health departments, schools, and colleges.
- Information on other housing agencies and authorities in neighboring areas for use in portability requests.

- Information on how to fill out and file a housing discrimination complaint form.
- The form HUD-5380 domestic violence certification form and the form HUD-5382 notice of occupancy rights, which contains information on VAWA protections for victims of domestic violence, dating violence, sexual assault, and stalking.
- “Is Fraud Worth It?” (Form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.
- “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19

### **Family Obligations**

Obligations of the families are described in the housing choice voucher (HCV) regulations and on the voucher itself. These obligations include the responsibilities the family is required to fulfill, as well as prohibited actions. The families are informed of these obligations during the briefing. The same information is included in the briefing packet. When the family’s unit is approved and the HAP contract is executed, the family must meet those obligations in order to continue participating in the program. Violations of any family obligations may result in termination of assistance.

### **Time frames for reporting Changes Required by Family Obligations**

MMPHA requires the family to respond to a request or notify MMPHA of a change in Family Obligations within 10 business days.

### **Family Obligations [24 CFR 982.551]**

Following is a list of a participant family’s obligations under the HCV program:

- The family must supply any information that the PHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information request by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and submit forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family must maintain the housing and is responsible for any Housing Quality Standards (HQS/NSPIRE) breach by the family caused by (1) failure to pay tenant-provided utilities, (2) failure to provide tenant-provided appliances, or (3) damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.

### **MMPHA Policy**

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

- The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice.
- The family must not commit any serious or repeated violation of the lease.

### **MMPHA Policy**

The PHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction or an owner's notice to evict, police reports, and affidavits from the owner, neighbors, or other credible parties with direct knowledge.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, living or housekeeping habits that cause damage to the unit or premises, and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking will not be construed as serious or repeated lease violations by the victim [24 CFR 5.2005(c)(1)].

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

### **MMPHA Policy**

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

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

### **MMPHA Policy**

- The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The new member must meet eligibility criteria. Any request to add a family member must also be approved by the landlord in writing.
- The family must also promptly notify the PHA in writing if any family member no longer lives in the unit.
- If the PHA has given approval, a foster child or a live-in aide may reside in the unit, the PHA has the discretion to adopt reasonable policies concerning residency by a foster child or live-in aid, and to define when PHA consent may be given or denied.
- The family must not sublease the unit, assign the lease, or transfer the unit.

- The family must supply any information requested by the PHA to verify the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify the PHA when the family is absent from the unit.
- The family must pay utility bills and provide and maintain any appliances the owner is not required to provide under the lease. [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit.
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program.
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or different unit, under any other federal, state, or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family unless the PHA has determined that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher].

#### **Determining Family Unit (Voucher) Size [24 CFR 982.402]**

For each family, the PHA determines the appropriate number of bedrooms under the PHA subsidy standards and enters the family unit size of the voucher issued to the family.

The family unit size does not dictate the size of the unit the family will actually lease, nor does it determine who within a household will share a bedroom/sleeping room.

#### **The following requirements apply when the PHA determines family unit size:**

- The subsidy standards must provide the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under housing quality standards.
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.



- Any live-in aide (approved by the PHA to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size.
- Unless a live-in aide resides with a family, the family unit size for any family consisting of a single person must be zero- or one-bedroom unit as determined under the PHA subsidy standard.

### **MMPHA Policy**

MMPHA Uses the Following Guidelines to Determine Bedroom Size

18 years old and older receives their own bedroom.

- 1- One Bedroom:
  - Single Individual,
  - Single Person with One Child under age 4
  - Couple with No Children
- 2- Two Bedroom:
  - Handicapped or Elderly individual who requires a live in caretaker.
  - Single parent with One Child aged 4 or older regardless of sex.
  - Single parent with Two Children same sex.
  - Single parent with Three Children one under age 4.
  - Couple with One Child.
  - Couple with Two Children same sex.

### **Age and Sex of Children Will Determine Difference between a 3 or 4 Bedroom**

- 3- Three Bedroom
  - Single parent with Three Children all above age 4
  - Single parent with Two Children over age 4 opposite sex
  - Couple with Two Children opposite sex
  - Couple with Three Children
  - Couple with Four Children two boys/two girls
- 4- Four Bedroom--Follow These Rules
  - NO more than two people to a bedroom.
  - Same Sex, age makes no difference.

### **Exceptions to Subsidy Standards**

In determining family unit size for a particular family, the PHA may grant an exception to its established subsidy standards if the PHA determines the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances [24 CFR 982.402 (b) (8)]. Reasons may include, but are not limited to:

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

For a single person who is not elderly, disabled, or a remaining family member, and exception cannot override the regulatory limit of a zero or one bedroom [24 CFR 982.402(b)(8)].

**MMPHA Policy**

MMPHA will consider granting an exception for any of the reasons specified in the regulation: the age, sex, health, handicap, or relationship of family members or other personal circumstances.

The family must request any exception to the subsidy standard in writing. The request must explain the need or justification for a larger family unit size and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source (e.g., doctor or health professional), unless the disability and the disability-related request for accommodation is readily apparent or otherwise known. The family's continued need for an additional bedroom due to special medical equipment may be asked to re-verify at annual reexamination.

MMPHA will notify the family of its determination within 10 business days of receiving the family's written request. If a participant family's request is denied, the notice will inform the family of their right to request an informal hearing.

**Voucher Issuance [24 CFR 982.302]**

When a family is selected from the waiting list, or when a participant family wants to move to another unit, the PHA issues a Housing Choice Voucher, form HUD-52646.

The voucher is the family's authorization to search for housing. It specifies the unit size for which the family qualifies and includes both the date of the voucher issuance and date of expiration. It contains a brief description of how the program works and explains the family obligations under the program. The voucher is evidence the PHA has determined the family to be eligible for the program and that the PHA expects to have money available to subsidize the family if the family finds an approvable unit. However, the PHA does not have any liability to any party by issuance of the voucher, and the voucher does not give the family any right to participate in the PHA's housing choice voucher program [Voucher, form 52646].

A voucher can be issued to an applicant family only after the PHA has determined that the family is eligible for the program based on information received within 60 days prior to issuance [24 CFR 982.201 (e)] and the family has attended the briefing.

**MMPHA Policy**

Vouchers will be issued to eligible applicants immediately following the mandatory briefing.

The PHA should have sufficient funds to house an applicant before issuing a voucher. If funds are insufficient to house the family at the top of the waiting list, the PHA must wait until it has adequate funds before it calls another family from the list. If the PHA

determines there is insufficient funding after a voucher has been issued, the PHA may rescind the voucher and place the affected family back on the waiting list.

**MMPHA Policy**

Prior to issuing any vouchers, the PHA will determine whether it has sufficient funding in accordance with the policies.

If the PHA determines that there is insufficient funding after a voucher has been issued, the PHA may rescind the voucher and place the affected family back on the waiting list.

**Voucher Term [24 CFR 982.303]**

**Voucher Term, Extensions, and Suspensions**

The initial term of a voucher must be at least 60 calendar days. The initial term must be stated on the voucher [24 CFR 982.303 (a)].

**MMPHA Policy**

- MMPHA will issue the initial voucher for a period that will not exceed 60 days. The primary responsibility for locating a unit belongs to the voucher holder. The Housing Service Specialists or Housing Program Manager will maintain a list of owners for each county willing to lease or have properties available to lease under the Housing Choice Voucher Program (Section 8).
  
- The MMPHA Staff will at the request of the family help negotiate the rent. [CFR 982.506]

**Extensions of Voucher Term [24 CFR 982.303 (b)]**

The PHA has the authority to grant extensions of search time, to specify the length of an extension, and to determine the circumstances under which extensions will be granted. There is no limit on the number of extensions the PHA can approve. Discretionary policies related to extensions and expiration of search time must be described in the PHA's administrative plan [24 CFR 982.54].

PHA's must approve additional search time if needed as a reasonable accommodation to make the program accessible to and usable by a person with disabilities. The extension period must be reasonable for the purpose.

**MMPHA Policy**

The family may request a 30-day extension by submitting a written request to the Housing Choice Voucher Office. This written request must be received by the Housing Choice Voucher Office in Columbia Missouri 7 days prior to the expiration date on the original voucher.

**When granting the extension MMPHA will consider the following:**

1. Local housing market-availability of units.
2. Family's level of effort to find a suitable unit during the initial term.

3. Whether there is a reasonable possibility that the family may, with additional advice and assistance, find a suitable unit.
4. Level of support services requested by and provided to the family.
5. Extenuating circumstances that prevent the family from finding a unit such as –
  - A. Serious illness in the family
  - B. Death in the family
  - C. Family emergency
  - D. Obstacles due to employment
  - E. Whether the family has already submitted request for approval of the tenancy for units that were not approved by the PHA
  - F. Whether family size or other special requirements made finding a unit difficult

MMPHA will provide to each family at the time of the briefing a Request for Extension form and a Housing Search Progress Report form.

The PHA will decide whether to approve or deny an extension request within 10 business days of the date the request is received and will immediately provide the family written notice of its decision.

### **Suspensions of Voucher Term [24 CFR 982.303 (c)]**

At its discretion, a PHA may adopt a policy to suspend the housing choice voucher term if the family has submitted a Request for Tenancy Approval (RFTA) during the voucher term.

“Suspension” means stopping the clock on a family’s voucher term from the time a family submits the RFTA until the time the PHA approves or denies the request [24 CFR 982.4]. The PHA’s determination not to suspend a voucher term is not subject to informal review [24 CFR 982.554 (c) (4)].

While the RFTA is being approved, the time counted against the sixty (60) days will be tolled; this time will not be counted against the sixty (60) day total of the voucher.

#### **MMPHA Policy**

If the family’s voucher term expires before the family has submitted a RFTA, MMPHA requires the family to reapply for assistance. If the family has submitted a RFTA prior to the expiration date of the voucher and it was disapproved by the PHA (after the voucher was expired) the family will be required to reapply for assistance.

### **Expiration of Voucher Term**

Once a family’s housing choice voucher term (including any extensions) expires, the family is no longer eligible to search for housing under the program. If the family still wishes to receive assistance, the PHA may require that the family reapply, or may place the family on the waiting list with a new application date but without requiring reapplication. Such a family does not become ineligible for the program on the grounds that it was unable to locate a unit before the

voucher expired.

### **MMPHA Policy**

If an applicant family's voucher term or extension expires before the PHA has approved a tenancy, the PHA will require the family to reapply for assistance.

Within 10 business days after the expiration of the voucher term or any extension, the PHA will notify the family in writing that the voucher term has expired and that the family must reapply in order to be placed on the waiting list.

## **Chapter 6 - Income and Subsidy Determination**

A family's income determines eligibility for assistance and is also used to calculate the family's payment and the PHA's subsidy. The PHA will use the policies and methods described in this chapter to ensure that only eligible families receive assistance and that no family pays more or less than its obligation under the regulations.

### **Annual Income**

HOTMA significantly revises the annual income regulations.

The new rule:

- Removes the examples of included income sources and provides a broader definition of income.
- Includes an expanded and clarified list of income exclusions.

### **Income Definition**

All amounts, not specifically excluded, received from all sources by each household member who is:

- 18 years of age or older or
- The head of household or spouse of the head of household (any age)

Plus

- Unearned income by or on behalf of each minor dependent
- Actual income from assets
- Imputed return on assets over \$50, 000

General requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. HUD regulations present income inclusions and exclusions separately [24 CFR 5.609(b) and 24 CFR 5.609(c)]. In this plan, however, the discussions of income inclusions and exclusions are integrated by topic (e.g., all policies affecting earned income are discussed together).

### **Household Composition and Income**

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

<b>Summary of Income Included and Excluded by Person</b>	
Live-in aides	Income from all sources is excluded [24 CFR 5.609(c) (5)].
Foster child or foster adult	Income from all sources is excluded [24 CFR 5.609(c) (2)].
Head, spouse, or co head Other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c) (1)]. All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or co head)	Employment income above \$480/year is excluded [24 CFR 5.609(c) (11)]. All other sources of income, except those specifically excluded by the regulations, are included.

The following new definitions are meant to clarify income that should be included even if the source, date, or amount of the income varies.

- **Independent contractor:** An individual who qualifies as an independent contractor, instead of an employee, under IRS Federal Income tax requirements and whose earnings are subject to the self-employment tax.
- **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.
- **Seasonal Worker:** An individual who is hired for a short-term position where employment begins about the same time each year. Typically, they are hired to address seasonal demands.

### **Temporarily Absent Family Members**

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit.

#### **MMPHA Policy**

Generally, an individual who is or is expected to be absent from the assisted unit for 60 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally, an individual who is or is expected to be absent from the assisted unit for more than 60 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy will be decided on a case-by-case basis.

### **Absent Students**

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

### **Absences Due to Placement in Foster Care**

Children temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR 5.403].

### **MMPHA Policy**

If a child has been placed in foster care, the PHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms the child has been permanently removed from the home, the child will be counted as a family member.

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

#### **MMPHA Policy**

An employed head, spouse, or co-head absent from the unit more than 60 consecutive days due to employment will continue to be considered a family member.

### **Absence Due to Incarceration**

#### **MMPHA Policy**

Members absent from the household due to incarceration for longer than 45 consecutive days will be considered to be permanently absent and no longer a family member.

### **Family Members Permanently Confined for Medical Reasons**

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted.

#### **MMPHA Policy**

MMPHA will request verification from a responsible medical professional and will use this determination as to permanent confinement in a nursing home or hospital. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or co head qualifies as an elderly person or a person with disabilities.

### **Joint Custody of Dependents**

#### **MMPHA Policy**

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family more than 50 percent or more of the time.

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

## **Caretakers for a Child**

### **MMPHA Policy**

The approval of a caretaker is at the owner and PHA's discretion and subject to the owner and PHA's screening criteria. If neither a parent nor a designated guardian remains in a household receiving HCV assistance, MMPHA will take the following actions.

1. If a responsible agency has determined another adult is to be brought into the assisted unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.
2. If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member unless information is provided that would confirm the caretaker's role is temporary. In such cases MMPHA will extend the caretaker's status as an eligible visitor.
3. At any time, custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the caretaker.
4. During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

## **Anticipating Annual Income**

Due to HOTMA changes PHA's are no longer required to project long-term income for annual reviews. They will also no longer be required to carry out more frequent ones.

They still must carry out and take into account interim reexaminations as required, but annualizing income is now eliminated and simply put the last 12 months of income, from the point of the income determination is all that is needed for an annual review.

Interim reexaminations are now triggered by increases or decreases in income of 10%. EIV is also not required during interim reexamination.

PHAs are required to use HUD's Enterprise Income Verification (EIV) system in its entirety as a third-party source to verify employment and income information, and to reduce administrative subsidy payment errors in accordance with HUD administrative guidance [24 CFR 5.233(a)(2)].

HUD allows PHAs to use tenant-provided documents (pay stubs) to project income once EIV data has been received in such cases where the family does not dispute the EIV employer data and where the PHA does not determine it is necessary to obtain additional third-party data.



### **MMPHA Policy**

When EIV is obtained and the family does not dispute the EIV employer data, the PHA will use current tenant-provided documents to project annual income. When the tenant-provided documents are pay stubs, the PHA will make every effort to obtain current and consecutive pay stubs dated within the last 60 days.

The PHA will obtain written and/or oral third-party verification in accordance with the verification requirements and policy in the following cases:

If EIV or other UIV data is not available,

If the family disputes the accuracy of the EIV employer data, and/or

If the PHA determines additional information is needed.

The PHA will also use income determinations from means-tested Federal Programs including the following:

- LIHTC
- WIC
- The SSI program
- TANF block grant
- Medicaid
- SNAP assistance
- EITC
- HOME and other HUD programs

### **Known Changes in Income**

If MMPHA verifies an upcoming increase or decrease in income, annual income will be calculated by applying each income amount to the appropriate part of the 12-month period.

Example: An employer reports that a full-time employee who has been receiving \$6/hour will begin to receive \$12.25/hour in the eighth week after the effective date of the reexamination. In such a case the PHA would calculate annual income as follows:  $(\$12/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$12.25 \times 40 \text{ hours} \times 45 \text{ weeks})$ .

The family may present information that demonstrates implementing a change before its effective date would create a hardship for the family. In such cases the PHA will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if the PHA's policy does not require interim reexaminations for other types of changes.

When tenant-provided third-party documents are used to anticipate annual income, they will be dated within the last 60 days of the reexamination interview date.

### **Earned Income**

Earned Income means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment.

**Some Types of Military Pay:**

All regular pay, special pay and allowances of a member of the Armed Forces are counted [24 CFR 5.609(b) (8)] except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(c) (7)].

**Types of Earn Income NOT Considered Earned Income**

- Any pension or annuity
- Transfer payments – payments or income received where no goods or services were offered
  - Welfare
  - Social Security
  - Government subsidies for certain benefits
- Any cash or in-kind benefits

**Children’s Earnings:** Employment income earned by children (including foster children) under the age of 18 years is not included in annual income [24 CFR 5.609(c) (1)].

**Certain Earned Income of Full-Time Students:** Earnings in excess of \$480 for each full-time student 18 years old or older (except for the head, spouse, or co-head) are not counted [24 CFR 5.609(c) (11)]. To be considered “full-time,” a student must be considered “full-time” by an educational institution with a degree or certificate program.

**Income of a Live-in Aide:** Income earned by a live-in aide, as defined in [24 CFR 5.403], is not included in annual income [24 CFR 5.609(c) (5)].

**Income Earned under Certain Federal Programs:** Income from some federal programs is specifically excluded from consideration as income [24 CFR 5.609(c) (17)], including:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- Awards under the federal work-study program (20 U.S.C. 1087)
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

**Resident Service Stipend**

Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, which enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of

the PHA's governing board. No resident may receive more than one such stipend during the same period of time [24 CFR 5.600(c)(8)(iv)].

### **State and Local Employment Training Programs**

Incremental earnings and benefits to any family member resulting from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program [24 CFR 5.609(c)(8)(v)].

#### **MMPHA Policy**

MMPHA defines training program as “a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period to time. It is designed to lead to a higher level of proficiency, and it enhances the individual's ability to obtain employment. It may have performance standards to measure proficiency. Training may include but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education” [expired Notice PIH 98-2, p. 3].

MMPHA defines incremental earnings and benefits as the difference between: (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program, and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3–4].

In calculating the incremental difference, MMPHA will use as the pre-enrollment income the total annualized amount of the family member's welfare assistance and earnings reported on the family's most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with the MMPHA's interim reporting requirements.

**HUD-Funded Training Programs:** Amounts received under training programs funded in whole or in part by HUD [24 CFR 5.609(c) (8) (i)] are excluded from annual income. Eligible sources of funding for the training include operating subsidy, Section 8 administrative fees, and modernization, Community Development Block Grant (CDBG), HOME program, and other grant funds received from HUD.

#### **MMPHA Policy**

To qualify as a training program, the program must meet the definition of training program provided above for state and local employment training programs.

**Earned Income Tax Credit:** Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)), are excluded from annual income [24 CFR 5.609(c) (17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee's payroll check.

## **Earned Income Disallowance**

Effective with the new HOTMA recent changes only those families currently on EID will remain on it until they have completed the two-year process. HUD has discontinued this section due to new HOTMA provisions. Below will remain in this administrative plan due to the few families that are currently receiving the Earned Income Disallowance.

The earned income disallowance for persons with disabilities is discussed below.

### **Earned Income Disallowance for Persons with Disabilities [24 CFR 5.617]**

The earned income disallowance (EID) encourages people with disabilities to enter the work force by not including the full value of increases in earned income for a period of time.

Eligibility criteria and limitations on the disallowance are summarized below.

#### **Eligibility**

This disallowance applies only to individuals in families already participating in the HCV program (not at initial examination). To qualify, the family must experience an increase in annual income that is the result of one of the following events:

- Employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment. Previously unemployed includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.
- Increased earnings by a family member who is a person with disabilities and whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].
- New employment or increased earnings by a family member who is a person with disabilities and who has received benefits or services under Temporary Assistance for Needy Families (TANF), or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least \$500.

#### **Calculation of the Disallowance**

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "baseline income." The family member's baseline income is his or her income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that he or she is participating in the EID. While qualification for the disallowance is the same for all families, calculation of the disallowance will differ depending on when the family member

qualified for the EID. Participants qualifying prior to May 9, 2016, will have the disallowance calculated under the “Original Calculation Method” described below which requires a maximum lifetime disallowance period of up to 48 consecutive months. Participants qualifying on or after May 9, 2016, will be subject to the “Revised Calculation Method” Which shortens the lifetime disallowance period to 24 consecutive months.

Under both the original and new methods, the EID eligibility criteria, the benefit amount, the single lifetime eligibility requirement, and the ability of the applicable family member to stop and restart employment during the eligibility period are the same.

## **Original Calculation Method**

### **Initial 12-Month Exclusion**

During the initial 12-month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded. The 12 months are cumulative and need not be consecutive.

#### **MMPHA Policy**

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

**Second 12-Month Exclusion and Phase-In:** During the second 12-month exclusion period, the exclusion is reduced to half (50 percent) of any increase in income attributable to employment or increased earnings. The 12 months are cumulative and need not be consecutive.

**Lifetime Limitation:** The EID has a four-year (48-month) lifetime maximum. The four-year eligibility period begins at the same time that the initial exclusion period begins and ends 48 months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance.

#### **MMPHA Policy**

During the 48-month eligibility period, MMPHA will schedule and conduct an interim reexamination each time there is a change in the family member’s annual income that affects or is affected by the EID (e.g., when the family member’s income falls to a level at or below his/her prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

## **Revised Calculation Method**

### **Initial 12-Month Exclusion**

During the initial exclusion period of 12 consecutive months, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded.

#### **MMPHA Policy**

The initial EID exclusion period will begin on the first of the month following the date an

eligible member of a qualified family is first employed or first experiences an increase in earnings.

### **Second 12-Month Exclusion**

During the second exclusion period of 12 consecutive months, the PHA must exclude at least 50 percent of any increase in income attributable to employment or increased earnings.

#### **MMPHA Policy**

During the second 12-month exclusion period, the PHA will exclude 50 percent of any increase in income attributable to new employment or increased earnings.

### **Lifetime Limitation**

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. During the 24 month period, an individual remains eligible for EID even if they begin to receive assistance from a different housing agency, move between public housing and Section 8 assistance, or have breaks in assistance.

### **Business Income [24 CFR 5.609(b) (2)]**

Annual income includes “the net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family” [24 CFR 5.609(b)(2)].

### **Business Expenses**

Net income is “gross income less business expense” [HCV GB, p. 5-19].

#### **MMPHA Policy**

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

### **Business Expansion**

HUD regulations do not permit the PHA to deduct from gross income expenses for business expansion.

#### **MMPHA Policy**

Business expansion is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a

business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

### **Capital Indebtedness**

HUD regulations do not permit the PHA to deduct from gross income the amortization of capital indebtedness.

#### **MMPHA Policy**

Capital indebtedness is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. MMPHA will allow interest as a business expense, but not principal paid on capital indebtedness.

### **Negative Business Income**

If the net income from a business is negative, no business income will be included in annual income; a negative amount will not be used to offset other family income.

### **Withdrawal of Cash or Assets from a Business**

HUD regulations require the PHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

#### **MMPHA Policy**

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of an assisted family provided an up-front loan of \$2,000 to help a business get started, the PHA will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid.

Investments do not include the value of labor contributed to the business without compensation.

### **Co-owned Businesses**

#### **MMPHA Policy**

If a business is co-owned with someone outside the family, the family must document the share of the business it owns. If the family's share of the income is lower than its share of ownership, the family must document the reasons for the difference.

### **Definition of Assets**

Net family assets: The net cash of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment. This new definition includes the cash value of all family assets with the exception of the expanded and enumerated exclusions.

### **Eligibility Restrictions Due to Family Assets 24 CFR 5.618(a)**

HOTMA restricts families from receiving assistance in the public housing or housing choice voucher program if their net family assets exceed \$100,000\* or if the family owns real property suitable for the family to live in. There are qualifications and exemptions from both requirements. PHAs cannot waive the asset requirements but can delay enforcement for current participants up to 6 months based on PHA policy.

Determining net family assets 24 CFR 5.6039b0 "Net Family Assets" Para. (2)

- PHA’s 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 or reexamination, in excess of the consideration received.
- 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 and exclusion from family assets.

**General Policies**

**Income from Assets**

In general, income from assets is considered income. If it is possible to calculate actual returns from an asset, the PHA should use that amount.

If it is not possible to calculate an actual return on an asset, and:

- The net family assets are \$50,000\* or less, the imputed income from that asset is excluded.
- The net family assets are over \$50,000,\* the PHA must impute income for the asset based on the current passbook savings rate, as determined by HUD.

Net Family Assets Scenario	Actual Income	Imputed Returns	Amount Included in Income
Assets of \$50,000 or less	Included	Not Calculated	Actual Income only
Exceeds \$50, 000 and actual income can be computed for ALL assets	Included	Not Calculated	Actual Income only
Exceeds \$50,000 and NO actual income can be computed	N/A	Calculated using HUD passbook rate for all assets	Imputed returns for all assets



Exceeds \$50,000, but actual income can only be computed for some assets	Included for assets that can be computed	Calculated for any remaining assets where actual income cannot be computed	Actual income that can be computed AND imputed returns for all remaining assets that cannot be computed
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### **Valuing Assets**

The calculation of asset income sometimes requires the PHA to make a distinction between an asset’s market value and its cash value.

- The market value of an asset is its worth (e.g., the amount a buyer would pay for real estate or the balance in an investment account).
- The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.

#### **MMPHA Policy**

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28].

### **Lump-Sum Receipts**

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIIP FAQs].

### **Determining Actual Anticipated Income from Assets**

It may or may not be necessary for the PHA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is not based on the property’s market value. However, if the asset is a savings account, the anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

### **Withdrawal of Cash or Liquidation of Investments**

Any withdrawal of cash or assets from an investment will be included in income except to the extent that the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement plan is not counted

as income until the family has received payments equal to the amount the family member deposited into the retirement fund.

### **Jointly Owned Assets**

The regulation at 24 CFR 5.609(a) (4) specifies that annual income includes “amounts derived (during the 12-month period) from assets to which any member of the family has access.”

#### **MMPHA Policy**

If an asset is owned by more than one person and any family member has unrestricted access to the asset, the PHA will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners. An asset is not effectively owned by a family member when (1) the asset and any income it earns accrue to the benefit of someone else who is not a member of the family and (2) that other person is responsible for income taxes incurred on income generated by the asset.

If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, MMPHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, MMPHA will prorate the asset evenly among all owners.

### **Assets Disposed of for Less than Fair Market Value [24 CFR 5.603(b)]**

HUD regulations require the PHA to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

### **Minimum Threshold**

The HVC Guidebook permits the PHA to set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

#### **MMPHA Policy**

MMPHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than \$500.

When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual recertification, the family may request an interim recertification to eliminate consideration of the asset(s).

Assets placed by the family in non-revocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.

### **Separation or Divorce**

The regulation also specifies that assets are not considered disposed of for less than fair market value if they are disposed of as part of a separation or divorce settlement and the applicant or tenant receives important consideration not measurable in dollar terms.

#### **MMPHA Policy**

All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been

received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

### **Foreclosure or Bankruptcy**

Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale.

### **Family Declaration**

#### **MMPHA Policy**

Families must sign a declaration form at initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. MMPHA may verify the value of the assets disposed of if other information available to the MMPHA does not appear to agree with the information reported by the family.

### **Types of Assets**

#### **Checking and Savings Accounts**

For regular checking accounts and savings accounts, cash value has the same meaning as market value. If a checking account does not bear interest, the anticipated income from the account is zero.

#### **MMPHA Policy**

In determining the value of a checking account, the PHA will use the average monthly balance for the last three months.

In determining the value of a savings account, the PHA will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account, the PHA will multiply the value of the account by the current rate of interest paid on the account.

#### **Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds**

Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

#### **MMPHA Policy**

In determining the market value of an investment account, the PHA will use the value of the account on the most recent investment report.

How anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings). When the anticipated rate of return is not known (e.g., stocks), the PHA will calculate asset income based on the earnings for the most recent reporting period.

**Restriction on Owning Real Property Suitable for Occupancy 24 CFR 5.618(a)(ii)**

A family cannot receive benefits if they have “present ownership interest in, a legal right to reside in, and the effective legal authority to sell, based on state or local laws of the jurisdiction where the property is located, real property that is suitable for occupancy by the family as a residence.”

The restriction on owning real property does not apply to:

- A family that receives assistance for the property under the Housing Choice Voucher Program for:
  - » Manufactured home (24 CFR 982.620)
  - » Homeownership Option
- Property jointly owned with someone else, and occupied by the other owner who is not a member of the household receiving benefits.
- A victim of domestic violence, dating violence, sexual assault, or stalking.
- A family that is offering the property for sale.
- A family that owns a property may show it is not “suitable for occupancy” if it:
- Does not meet the disability-related needs for all members of the family.
  - » Examples: Physical needs, proximity to transit, need for additional bedrooms or space, etc.
- Is not sufficient for the size of the family.
- Is located so as to be a hardship for the family.
  - » Example: the location would be a hardship for the family’s commute to work or school
- Is unsafe because of physical condition.
  - » Unless issues can be “easily remedied”
- Cannot be a residence per local or state laws.
  - » Example: a storefront zoned for commercial use only

**Excluded assets 25 CFR 5.603(b) “Net Family Assets” Para. (3) and (4)**

The following assets are excluded under HOTMA. If the family owns an excluded asset, its value does not count toward the restriction due to net family assets. Most of these exclusions are new.

Category	Excluded Asset	Example(s)	Notes
Personal Property	Necessary items of personal property	Medical devices, vehicle for commute	Determining what is a “necessary item” for personal property is a highly fact-specific determination. Additional guidance is forthcoming from HUD.

Personal property	Non-necessary items of personal property if the combined total value does not exceed \$50,000	Vintage baseball cards, recreational boat, coin collection, art so long as the total value is under the limit	This matches the value of assets that can be self-certified by the family.
Savings account	Retirement account recognized by IRS	IRA, 401(k), 401(b) and retirement plans for self-employed individuals	
Real property	Real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located	Property subject to a lawsuit may be legally restricted from sale.	Such property does not count against the dollar amount limit or the real property limitation
Cash	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, for an incident resulting in a disability	A drunk driver injures a family member, who then has a disability. The family sues, and the driver's insurance pays the family.	

Savings account	The value of certain education or disability support savings accounts	Under Internal Revenue Code sections 529, 529A, 530, “baby bond” accounts	Coverdell accounts, tuition programs, and “baby bond” account created, authorized, or funded by Federal, state, or local government
Real property	Interest in Indian trust land	Family has interest in land held in trust by Bureau of Indian Affairs	Existing exclusion
Real property	Equity in a manufactured home where the family receives assistance under 24 CFR 982	HCV Manufactured Home Space Rental participants	
Real property	Equity in property where the family receives assistance under 24 CFR 982	HCV homeownership participant	For real property other than manufactured homes
Savings account	Family Self-Sufficiency (FSS) account		The family does not have access to FSS funds during their participation in the program. Also excluded from income
Cash	Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family	Earn Income Tax Credits (EITC)	

Trust Funds	Trust that is not revocable by, or under the control of, any member of the family or household	Non-revocable trust fund; trust fund revocable once minor child reaches age 21	As long as a trust meets this definition, it is not an asset of the family.
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**Life Insurance**

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy is included in the calculation of the value of the family’s assets [HCV GB 5-25]. The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated number of dividends or interest is counted as income from the asset whether or not the family actually receives it.

**Periodic Payments**

Periodic payments are forms of income received on a regular basis. HUD regulations specify periodic payments that are and are not included in annual income.

**Periodic Payments Included in Annual Income**

- Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family [24 CFR 5.609(b) (4) and (b) (3)].
- Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 CFR 5.609(b)(4) and HCV, p. 5-14]

**Lump-Sum Payments for the Delayed Start of a Periodic Payment**

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income [CFR 5.609(b) (4)].

**MMPHA Policy**

When a delayed-start payment is received all families must complete interim reexamination within 10-days. Also, if reported during the period in which the PHA is processing an annual reexamination, the PHA will adjust the family share and PHA subsidy retroactively for the period the payment was intended to cover. The family may pay in full any amount due or request to enter into a repayment agreement with the PHA.

**Treatment of Overpayment Deductions from Social Security Benefits**

The PHA must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the

withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, the PHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2012-10].

### **Periodic Payments Excluded from Annual Income**

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 CFR 5.609(c)(2)]

#### **MMPHA Policy**

The PHA will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency [HCV GB, p. 5-18].

- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]
- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]
- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c) (17)]. Note: EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.
- Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.J.) [24 CFR 5.609(b) (4)].
- Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [24 CFR 5.609(c)(14)].

### **Payments in Lieu OF Earnings**

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income [24 CFR 5.609(b)(5)] if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts [24 CFR 5.609(c) (3)]. (See also the discussion of periodic payments in section 6-I.H and the discussion of lump-sum receipts in section 6-I.G.)

### **Welfare Assistance**

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments [24 CFR 5.603(b)].



### **Sanctions Resulting in the Reduction of Welfare Benefits [24 CFR 5.615]**

The PHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-5. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

#### **Covered Families**

The families covered by 24 CFR 5.615 are those “who receive welfare assistance or other public assistance benefits (‘welfare benefits’) from a State or other public agency (‘welfare agency’) under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance” [24 CFR 5.615(b)]

#### **Imputed Income**

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, the PHA must include in annual income “imputed” welfare income. The PHA must request that the welfare agency inform the PHA when the benefits of an HCV participant family are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements [24 CFR 5.615(b) (2)].

#### **Offsets**

The amount of the imputed income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero [24 CFR 5.615(c) (4)].

#### **Periodic and Determinable Allowances [24 CFR 5.609(b) (7)]**

Annual income includes periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing with an assisted family.

#### **Alimony and Child Support**

The PHA must count alimony or child support amounts awarded as part of a divorce or separation agreement.

##### **MMPHA Policy**

The PHA will count court-awarded amounts for alimony and child support unless the PHA verifies that: (1) the payments are not being made, and (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47].

Families who do not have court-awarded alimony and child support awards are not required to seek a court award and are not required to take independent legal action to obtain collection.

### **Regular Contributions or Gifts**

The PHA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with an assisted family [24 CFR 5.609(b) (7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c) (9)].

#### **MMPHA Policy**

Examples of regular contributions include: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.

Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by the PHA. For contributions that may vary from month to month (e.g., utility payments), the PHA will include an average amount based upon past history.

### **Student Financial Assistance Excluded from Annual Income [24 CFR 5.609(c) (6)]**

- This change directs PHAs and owners to exclude forms of student assistance and some income from a family's income calculation, including Federal Pell Grants, Teach Grants, Federal Work-Study Programs, Federal Perkins Loans, among others.
- This applies even if the assistance the student receives is more than the cost of tuition and fees. However, Congress usually includes language in their budget which forces PHAs to count any amount of student financial assistance in excess of the costs of tuition, fees, and other charges towards a family's income. Therefore, the extent to which student aid is excluded from the income calculation will be a year-by-year decision. Though Congress has included this language for a decade.

### **Additional Exclusions from Annual Income**

Other exclusions contained in 24 CFR 5.609(c) that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]

- Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c) (17)].

HUD publishes an updated list of these exclusions periodically. It includes:

- (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
- (b) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
- (c) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- (d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
- (e) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
- (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
- (g) Payments received under programs funded in whole or in part under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
- (h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
- (i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
- (j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b))
- (k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled Elouise Cobell et al. v. Ken Salazar et al., for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010
- (l) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
- (m) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs)
- (n) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))

- (o) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
- (p) Payments received under 38 U.S.C. 1833(c) to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida
- (q) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (r) The value of any childcare provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- (s) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (t) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965j, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109–249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109–249)
- (v) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (w) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)
- (x) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002
- (y) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013–30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a))
- (z) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations

### **Adjusted Income**

HUD regulations require PHAs to deduct from annual income any of four mandatory deductions for which a family qualifies. The resulting amount is the family's adjusted income. Mandatory deductions are found in [24 CFR 5.611]

(a) Mandatory deductions. In determining adjusted income, the responsible entity [PHA] must deduct the following amounts from annual income:

- (1) \$480 for each dependent.
  - (2) \$525 for any elderly family or disabled family.
  - (3) HOTMA increases the allowance for unreimbursed health and medical care expenses from 3% of annual income to 10%, phased-in over two years.
    - (i) Unreimbursed medical expenses of any elderly family or disabled family.
    - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
  - (4) Any reasonable childcare expenses necessary to enable a member of the family to be employed or to further his or her education.
- This part covers policies related to these mandatory deductions. Verification requirements related to these deductions.

### **Anticipating Expenses**

#### **MMPHA Policy**

Generally, the PHA will use current circumstances to anticipate expenses. When possible, for costs expected to fluctuate during the year (e.g., childcare during school and non-school periods and cyclical medical expenses), the PHA will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, the PHA will include as an eligible expense the portion of the debt the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. The PHA may require the family to provide documentation of payments made in the preceding year.

### **Dependent Deduction**

A deduction of \$480 is taken for each dependent [24 CFR 5.611(a) (1)]. Dependent is defined as any family member other than the head, spouse, or co head who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

### **Elderly or Disabled Family Deduction**

A single deduction of \$525 is taken for any elderly or disabled family [24 CFR 5.611(a) (2)]. An elderly family is a family whose head, spouse, co-head, or sole member is 62 years of age or older, and a disabled family is a family whose head, spouse, co-head, or sole member is a person with disabilities [24 CFR 5.403].

### **Medical Expenses Deduction [24 CFR 5.611(a)(3)(i)]**

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed 10 percent of annual income phased-in over two years.

The medical expense deduction is permitted only for families in which the head, spouse, or co head is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted [VG, p. 28].

**Definition of Medical Expenses**

HUD regulations define medical expenses at 24 CFR 5.603(b) to mean “medical expenses, including medical insurance premiums, which are anticipated during the period for which annual income is computed, and that are not covered by insurance.”

**MMPHA Policy**

The most current IRS Publication 502, Medical and Dental Expenses, will be used to determine the costs that qualify as medical expenses.

<b>Summary of Allowable Medical Expenses from IRS Publication 502</b>	
Services of medical professionals Surgery and medical procedures that are necessary, legal, no cosmetic Services of medical facilities Hospitalization, long-term care, and in-home nursing services Prescription medicines and insulin, but not nonprescription medicines if recommended by a doctor Improvements to housing directly related to medical needs (e.g., ramps for a wheelchair, handrails)	Substance abuse treatment programs Psychiatric treatment Ambulance services and some costs of transportation related to medical expenses The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth) Cost and continuing care of necessary service animals Medical insurance premiums or the cost of a health maintenance organization (HMO)
<p><b>Note:</b> This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.</p>	

**Families That Qualify for Both Medical and Disability Assistance Expenses**

**MMPHA Policy**

This policy applies only to families in which the head, spouse, or co head is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the PHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

**Disability Assistance Expenses Deduction [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)]**

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (1) are necessary to enable a family member 18 years or older to work, (2) are not paid to a family member or reimbursed by an outside source, (3) in combination with

any medical expenses, exceed 10 percent of annual income phased-in over two years, and (4) do not exceed the earned income received by the family member who is enabled to work.

### **Earned Income Limit on the Disability Assistance Expense Deduction**

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)].

The disability expense deduction is capped by the amount of “earned income received by family members who are 18 years of age or older and who are able to work” because of the expense [24 CFR 5.611(a)(3)(ii)]. The earned income used for this purpose is the amount verified before any earned income disallowances or income exclusions are applied.

#### **MMPHA Policy**

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, the PHA will consider factors such as how the work schedule of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.

When the PHA determines that the disability assistance expenses enable more than one family member to work, the expenses will be capped by the sum of the family members’ incomes.

### **Eligible Disability Expenses**

Examples of auxiliary apparatus are provided in the HCV Guidebook as follows: “Auxiliary apparatus are items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a blind person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work” [HCV GB, p. 5-30].

HUD advises PHAs to further define and describe auxiliary apparatus [VG, p. 30].

### **Eligible Auxiliary Apparatus**

#### **MMPHA Policy**

Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost-of-service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.

### **Eligible Attendant Care**

The family determines the type of attendant care that is appropriate for the person with disabilities.

#### **MMPHA Policy**

Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.

If the care attendant also provides other services to the family, the PHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

### **Payments to Family Members**

No disability assistance expenses may be deducted for payments to a member of an assisted family [24 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the assisted family may be deducted if they are not reimbursed by an outside source.

### **Necessary and Reasonable Expenses**

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

#### **MMPHA Policy**

The PHA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, the PHA will collect information from organizations that provide services and support to persons with disabilities. A family may present, and the PHA will consider, the family's justification for costs that exceed typical costs in the area.

### **Families That Qualify for Both Medical and Disability Assistance Expenses**

#### **MMPHA Policy**

This policy applies only to families in which the head or spouse is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the PHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

### **Child Care Expense Deduction**

HUD defines childcare expenses at 24 CFR 5.603(b) as "amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for childcare. In the case of childcare necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income."



### **Clarifying the Meaning of Child for This Deduction**

Childcare expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family's household [VG, p. 26]. However, childcare expenses for foster children that are living in the assisted family's household are included when determining the family's childcare expenses [HCV GB, p. 5-29].

### **Qualifying for the Deduction**

#### **Determining Who Is Enabled to Pursue an Eligible Activity**

##### **MMPHA Policy**

The family must identify the family member(s) enabled to pursue an eligible activity. The term eligible activity in this section means any of the activities that may make the family eligible for a childcare deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family's request, the PHA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

#### **Seeking Work**

##### **MMPHA Policy**

If the childcare expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the childcare expense being allowed by the PHA.

#### **Furthering Education**

##### **MMPHA Policy**

If the childcare expense being claimed is to enable a family member to further his or her education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the childcare claimed.

#### **Being Gainfully Employed**

##### **MMPHA Policy**

If the childcare expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that childcare is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.

#### **Earned Income Limit on Child Care Expense Deduction**

When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for childcare – although the care must still be necessary and

reasonable. However, when childcare enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)].

The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

When the person who is enabled to work is a person with disabilities who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480 is excluded, childcare costs related to enabling a family member to work may not exceed the portion of the person’s earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes \$15,000 but because of the EID only \$5,000 is included in annual income, childcare expenses are limited to \$5,000. This only applies for those currently on EID. Due to HOTMA changes EID will no longer be available for HCV participants.

The PHA must not limit the deduction to the least expensive type of childcare. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30].

#### **MMPHA Policy**

When the childcare expense being claimed is to enable a family member to work, only one family member’s income will be considered for a given period of time. When more than one family member works during a given period, the PHA generally will limit allowable childcare expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

#### **Eligible Child Care Expenses**

The type of care to be provided is determined by the assisted family. The PHA may not refuse to give a family the childcare expense deduction because there is an adult family member in the household that may be available to provide childcare [VG, p. 26].

#### **Allowable Child Care Activities**

##### **MMPHA Policy**

For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of childcare.

The costs of general housekeeping and personal services are not eligible. Likewise, childcare expenses paid to a family member who lives in the family’s unit are not eligible; however, payments for childcare to relatives who do not live in the unit are eligible.

If a childcare provider also renders other services to a family or childcare is used to enable a family member to conduct activities that are not eligible for consideration, the PHA will prorate the costs and allow only that portion of the expenses that is attributable

to childcare for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the childcare provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

### **Necessary and Reasonable Costs**

Childcare expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education, and (2) the family certifies, and the childcare provider verifies, that the expenses are not paid or reimbursed by any other source.

#### **MMPHA Policy**

Childcare expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For childcare that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.

To establish the reasonableness of childcare costs, the PHA will use the schedule of childcare costs from the local welfare agency. Families may present, and the PHA will consider, justification for costs that exceed typical costs in the area.

### **Calculating Family Share and PHA Subsidy**

#### **Rent and Subsidy Calculations**

##### **TTP Formula [24 CFR 5.628]**

HUD regulations specify the formula for calculating the total tenant payment (TTP) for an assisted family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between \$0 and \$50 that is established by the PHA

The PHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

The amount that a family pays for rent and utilities (the family share) will never be less than the family's TTP but may be greater than the TTP depending on the rent charged for the unit the family selects.

##### **Welfare Rent [24 CFR 5.628]**

#### **MMPHA Policy**

Welfare rent does not apply in this locality.

##### **Minimum Rent [24 CFR 5.630]**

#### **MMPHA Policy**

The minimum monthly rent for this locality is \$50.00.

**Family Share [24 CFR 982.305(a) (5)]**

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the PHA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy the PHA may not approve the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. The income used for this determination must have been verified no earlier than 60 days before the family's voucher was issued.

**PHA Subsidy [24 CFR 982.505(b)]**

The PHA will pay a monthly housing assistance payment (HAP) for a family that is equal to the lower of (1) the applicable payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP.

**Utility Reimbursement [24 CFR 982.514 (b)]**

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

**MMPHA Policy**

The PHA will issue all utility reimbursements monthly. The PHA will make any utility reimbursements directly to a utility provider. The electric utility provider will receive first priority for payment unless the participant provides a written request for a different utility provider to receive all or some of the reimbursement. Should the payments to the electric utility provider result in a credit that exceeds the average of 6 months billing or five hundred dollars (\$500.00), the participant must designate a second utility provider to receive the payments until the credit has been reduced to no more than one hundred dollars (\$100.00).

**Financial Hardships Affecting Minimum Rent [24 CFR 5.630]****MMPHA Policy**

The financial hardship rules described below applies in this jurisdiction because the PHA has established a minimum rent of \$50.00.

If the PHA establishes a minimum rent greater than zero, the PHA must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If the PHA determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

HOTMA provides hardship relief for expense deductions, lessening the impact of the increased threshold for medical expenses. HOTMA permits PHAs to grant hardship relief to families unable to pay rent because of unanticipated medical/disability expenses and families who are no longer eligible for the childcare expense deduction.

## **HUD-Defined Financial Hardship**

Financial hardship includes the following situations:

(1) The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

### **MMPHA Policy**

A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent:

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following: (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

(2) The family would be evicted because it is unable to pay the minimum rent. For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent to the owner or tenant-paid utilities:

(3) Family income has decreased because of changed family circumstances, including the loss of employment.

(4) A death has occurred in the family.

In order to qualify under this provision, a family must describe how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member's income):

The family has experienced other circumstances determined by the PHA.

The PHA has not established any additional hardship criteria.

## **Implementation of Hardship Exemption**

### **Determination of Hardship**

When a family requests a financial hardship exemption, the PHA must suspend the minimum rent requirement beginning the first of the month following the family's request.

The PHA then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

### **MMPHA Policy**

The PHA defines temporary hardship as a hardship expected to last 90 days or less.

Long-term hardship is defined as a hardship expected to last more than 90 days.

When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

<b>Example: Impact of Minimum Rent Exemption</b>			
Assume the PHA has established a minimum rent of \$50.			
<b>Family Share – No Hardship</b>		<b>Family Share – With Hardship</b>	
\$0	30% of monthly adjusted income	\$0	30% of monthly adjusted income
\$15	10% of monthly gross income	\$15	10% of monthly gross income
N/A	Welfare rent	N/A	Welfare rent
\$50	Minimum rent	\$50	Minimum rent
Minimum rent applies. TTP = \$50		Hardship exemption granted. TTP = \$15	

**MMPHA Policy**

To qualify for a hardship exemption, a family must submit a HUD minimum Rent Exceptions request along with documents showing proof of the hardship. The Program Officer will review each request and notify family within 10 business days of their decision to approve or deny request. Families that are approved will need to continue to prove their hardship every three months until they have a monthly income greater than \$50.00.

**No Financial Hardship**

If the PHA determines there is no financial hardship, the PHA will reinstate the minimum rent and require the family to repay the amounts suspended.

**MMPHA Policy**

The PHA will require the family to repay the suspended amount within 30 calendar days of the PHA’s notice that a hardship exemption has not been granted.

**Temporary Hardship**

If the PHA determines that a qualifying financial hardship is temporary, the PHA must suspend the minimum rent for the 90-day period beginning the first of the month following the date of the family’s request for a hardship exemption.

At the end of the 90-day suspension period, the family must resume payment of the minimum rent and must repay the PHA the amounts suspended. HUD requires the PHA to offer a reasonable repayment agreement, on terms and conditions established by the PHA. The PHA also may determine that circumstances have changed, and the hardship is now a long-term hardship.

**MMPHA Policy**

The PHA will enter into a repayment agreement in accordance with the procedures.

**Long-Term Hardship**

If the PHA determines that the financial hardship is long-term, the PHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family’s request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

**MMPHA Policy**

The hardship period ends when any of the following circumstances apply:

- (1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
- (2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a \$60/month child support payment, the hardship will continue to exist until the family receives at least \$60/month in income from another source or once again begins to receive the child support.
- (3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

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

The PHA's schedule of payment standards are used to calculate housing assistance payments for HCV families. This section covers the application of the PHA's payment standards. The establishment and revision of the PHA's payment standard schedule are covered in program administration.

### **Payment standard**

Is defined as "the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)" [24 CFR 982.4(b)].

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under the PHA's subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family.

If the PHA has established an exception payment standard for a designated part of an FMR area and a family's unit is located in the exception area, the PHA must use the appropriate payment standard for the exception area.

The PHA is required to pay a monthly housing assistance payment (HAP) for a family that is the lower of (1) the payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP.

If during the term of the HAP contract for a family's unit, the owner lowers the rent, the PHA will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit [HCV GB, p. 7-8].

### **Changes in Payment Standards**

When the PHA revises its payment standards during the term of the HAP contract for a family's unit, it will apply the new payment standards in accordance with HUD regulations.

Due to HOTMA changes: The 90 to 110 percent of FMR discretionary range for area payment standards remains unchanged, but PHAs can increase the payment standard to 120 percent of the

FMR without having to seek HUD approval as a reasonable accommodation for a person with a disability. (Section 102(d), amending section 8(o)(1)(D) of the U.S.H.A.)

### **Decreases**

If a PHA changes its payment standard schedule, resulting in a lower payment standard amount, during the term of a HAP contract, the PHA is not required to reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect [FR Notice 11/16/16].

However, if the PHA does choose to reduce the payment standard for families currently under HAP contract, the initial reduction to the payment standard may not be applied any earlier than the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount. At that point, the PHA may either reduce the payment standard to the current amount in effect on the PHA's payment standard schedule or may reduce the payment standard to another amount that is higher than the normally applicable amount on the schedule. The PHA may also establish different policies for designated areas within their jurisdiction (e.g., different zip code areas).

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

#### **MMPHA Policy**

If a PHA changes its payment standard schedule resulting in a lower payment standard amount, during the term of a HAP contract, the PHA will not reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect.

The PHA will not establish different policies for decreases in the payment standard for designated areas within their jurisdiction.

### **Increases**

If the payment standard is increased during the term of the HAP contract, the increased payment standard will be used to calculate the monthly housing assistance payment for the family beginning on the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard.

Families requiring or requesting interim reexaminations will not have their HAP payments calculated using the higher payment standard until their next annual reexamination [HCV GB, p. 7-8].

### **Changes in Family Unit Size**

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



### **Applying Utility Allowances [24 CFR 982.517]**

The cost of each utility and housing service category must be stated separately. For each category, the schedule must take into consideration the type and size of the unit, and the energy source.

- **Unit Types.** PHAs must have utility allowances for common structure types in their jurisdiction, e.g. garden/low-rise apartments, high-rise apartments, row houses or town houses, single family detached units, duplexes, and manufactured homes. Utility usage often depends on the unit's number of shared walls.
- **Unit Sizes.** Are classified by number of bedrooms. When calculating the utility allowance for a family, the PHA must use the lower of the unit size leased or the family's voucher size determined under the PHA's subsidy standards.
- **Fuel Type.** Refers to the type of fuel used. When establishing utility allowances for space heating, cooking, and water heating, PHA utility allowance schedule's often include allowances for each type of utility or fuel commonly used in the community. Fuel types include natural gas, bottle gas, oil/electric, and coal/other. If the utility or fuel is available from more than one supplier, the PHA can determine an average cost across all suppliers, or can use different allowances for utilities or fuels purchased from different suppliers. The PHA's initial and revised utility allowance schedule must be submitted to HUD. The PHA must do so by submitting the utility allowance schedule directly to their local HUD field office on Form HUD-52667, Allowances for Tenant Furnished Utilities and Other Services.

Due to HOTMA provisions, requires HUD to regularly publish data regarding utility consumption and costs that can be collected cost-effectively and that HUD determines will be useful for setting voucher utility allowances, and to provide the data in a manner that avoids unnecessary administrative burdens for agencies and protects families from high rent and utility cost burdens relative to income. (Section 108(a)(2), inserting new Section 8(o)(20) of the U.S.H.A.)

### **Reasonable Accommodation**

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on the PHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the PHA will approve an allowance for air-conditioning, even if the PHA has determined that an allowance for air-conditioning generally is not needed.

The family must request the higher allowance in writing and provide the PHA with an explanation of the need for the reasonable accommodation and information about the amount of additional allowance required [HCV GB, p. 18-8].

### **Utility Allowance Revisions**

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

### **MMPHA Policy**

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

### **Prorated Assistance for Mixed Families [24 CFR 5.520]**

HUD regulations prohibit assistance to ineligible family members. A mixed family is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The PHA must prorate the assistance provided to a mixed family. The PHA will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible. For example, if the PHA subsidy for a family is calculated at \$500 and two of four family members are ineligible, the PHA subsidy would be reduced to \$250.

### **Annual Income Inclusions 24 CFR 5.609**

(a) Annual income means all amounts, monetary or not, which:

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- (3) Which are not specifically excluded in paragraph (c) of this section.
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
- (4) The full number of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of

periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section).

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section).

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31<sup>1</sup>; and

(B) Are not otherwise excluded under paragraph (c) of this section.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.

(8) All regular pay, special pay, and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section) Text of 45 CFR 260.31 follows.

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

### **HHS (Health & Human Services) Definition of "Assistance"**

#### **45 CFR: General Temporary Assistance for Needy Families**

##### **260.31 What does the term "assistance" mean?**

(a)(1) The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and childcare provided to families who are not employed.

**b. Excludes: (1) Nonrecurring, short-term benefits that:**

(i) Are designed to deal with a specific crisis or episode of need.

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training).

(3) Supportive services such as childcare and transportation provided to families who are employed.

(4) Refundable earned income tax credits.

(5) Contributions to, and distributions from, Individual Development Accounts.

(6) Services such as counseling, case management, peer support, childcare information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

**Annual Income Exclusions 24 CFR 5.609**

**(c)** Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years.

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section).

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.

(5) Income of a live-in aide, as defined in Sec. 5.403.

(6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution.

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

(8) (i) Amounts received under training programs funded by HUD.

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).

(iii) Amounts received by a participant in other publicly assisted programs which are specifically

for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program.

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, which enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period.

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program.

(9) Temporary, nonrecurring, or sporadic income (including gifts).

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse).

(12) Adoption assistance payments in excess of \$480 per adopted child.

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit.

(16) Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

## **Treatment of Family Assets**

### **24 CFR 5.603(b) Net Family Assets**

1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in

Indian trust land, and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

### **Earned Income Disallowance for Persons with Disabilities**

#### **24 CFR 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of Increase in Annual Income**

(a) Applicable programs. The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

(b) Definitions. The following definitions apply for purposes of this section.

**Baseline income.** The annual income immediately prior to implementation of the disallowance described in paragraph (c)(1) of this section of a person with disabilities (who is a member of a qualified family).

#### **Disallowance: Exclusion from annual income.**

Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

**Qualified family.** A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment.

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance-- provided that the total amount over a six-month period is at least \$500.

(c) Disallowance of increase in annual income—

(1) Initial twelve-month exclusion. During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) Second twelve-month exclusion and phase-in. During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) Maximum two-year disallowance. The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 24-month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 24-month period starting from the initial exclusion under paragraph (c)(1) of this section.

(4) Effect of changes on currently participating families. Families eligible for and participating in the disallowance of earned income under this section prior to May 9, 2016, will continue to be governed by this section in effect as it existed immediately prior to that date (see 24 CFR parts 0 to 199, revised as of April 1, 2016).

(d) Inapplicability to admission. The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

This only applies for those currently on EID. Due to HOTMA changes EID will no longer be available for HCV participants.

#### **THE EFFECT OF WELFARE BENEFIT REDUCTION**

##### **24 CFR 5.615 Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.**

(a) Applicability. This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) Definitions. The following definitions apply for purposes of this section:

**Covered families.** Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

**Economic self-sufficiency program.** See definition at Sec. 5.603.

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

**Specified welfare benefit reduction.**

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits.

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) Imputed welfare income.

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as



determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

**(d) Review of PHA decision.**

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

**(e) PHA relation with welfare agency.**

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the

family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

### **Chapter 7 - Verification [24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230]**

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

The PHA will follow the verification guidance provided by HUD in PIH Notice 2004-01 Verification Guidance and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary PHA policies.

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies of the PHA.

### **General Verification Requirements**

#### **Family Consent to Release OF Information [24 CFR 982.516 AND 982.551, 24 CFR 5.230]**

The family must supply any information that the PHA or HUD determines is necessary to the administration of the program and must consent to PHA verification of that information [24 CFR 982.551].

#### **Consent Forms**

It is required that all adult applicants and participants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the PHA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

#### **Penalties for Failing to Consent [24 CFR 5.232]**

If any family member who is required to sign a consent form fails to do so, the PHA will deny admission to applicants and terminate assistance of participants. The family may request an informal review (applicants) or informal hearing (participants) in accordance with PHA procedures.

Due to HOTMA revises the required consent form that all adults household members sign, allowing them to sign the form only once instead of annually.

## **Verification Requirements**

### **HUD's Verification Hierarchy**

HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires the PHA to use the most reliable form of verification that is available and to document the reasons when the PHA uses a lesser form of verification.

#### **MMPHA Policy**

In order of priority, the forms of verification that the PHA will use are:

- Up-front Income Verification (EIV/UIV) whenever available
- Up-front Income Verifications Non-EIV
- Third-party Written Verification
- Third-party Written Verification form
- Third-party Oral Verification
- Tenant Declaration Self-Certification

Each of the verification methods is discussed in subsequent sections below. Exhibit 7-1 at the end of this section contains an excerpt from the notice that provides guidance with respect to how each method may be used.

## **Requirements for Acceptable Documents**

#### **MMPHA Policy**

Any documents used for verification must be the original (not photocopies) and generally must be dated within 60 calendar days of the date they are provided to the PHA. The documents must not be damaged, altered or in any way illegible.

The PHA will accept documents dated up to 6 months before the effective date of the family's reexamination if the document represents the most recent scheduled report from a source. For example, if the holder of a pension annuity provides semi-annual reports, the PHA would accept the most recent report.

Printouts from web pages are considered original documents.

The PHA staff member who views the 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, and sign the copy.

Any family self-certifications must be made in a format acceptable to the PHA.

## **File Documentation**

The PHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the

verification process will be recorded in the family's file in sufficient detail to demonstrate that the PHA has followed all of the verification policies set forth in this plan. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

#### **MMPHA Policy**

The PHA will document, in the family file, the following:

- Reported family annual income
- Value of assets
- Expenses related to deductions from annual income
- Other factors influencing adjusted income

When the PHA is unable to obtain third-party verification, the PHA will document in the family file the reason that third-party verification was not available [24 CFR 982.516(a)(2); Notice PIH 2010-19].

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

Up-front income verification (UIV) refers to the PHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to the PHA.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until the PHA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through the informal review/hearing process of the PHA.

#### **Use of HUD's Enterprise Income Verification (EIV) System**

HUD's EIV system contains data showing earned income, unemployment benefits, and Social Security/ SSI benefits for participant families. HUD requires the PHA to use the EIV system when available. The following policies will apply when the PHA has access to HUD's EIV system.

The EIV system contains two main components: tenant income data reports and "exceeds threshold" reports.

#### **EIV Identity Verification**

The EIV system verifies tenant identities against SSA records. These records are compared to PIC data for a match on Social Security number, name, and date of birth. When identity verification for a participant fails, a message will be displayed within the EIV system, and no income information will be displayed.

## **Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory)**

PHAs must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income in accordance with 24 CFR 5.236 and administrative guidance issued by HUD. The EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families. The following policies apply to the use of HUD's EIV system.

### **EIV Income Reports**

The data shown on income reports is updated quarterly. Data may be between 3 and 6 months old at the time reports are generated.

#### **MMPHA Policy**

The PHA will obtain income reports for annual reexaminations on a yearly basis.

Reports will be generated as part of the regular reexamination process.

Income reports will be compared to family provided information as part of the annual reexamination process. Income reports may be used in the calculation of annual income.

Income reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between income reports and family provided information will be resolved.

EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources. Income reports will be retained in participant files with the applicable annual reexamination documents.

When the PHA determines through income reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies.

### **EIV Identity Verification**

The EIV system verifies tenant identities against SSA records. These records are compared to PIC data for a match on social security number, name, and date of birth.

PHAs are required to use EIV's Identity Verification Report on a monthly basis to improve the availability of income information in EIV [Notice PIH 2012-10].

When identity verification for a participant fails, a message will be displayed within the EIV system, and no income information will be displayed.

#### **MMPHA Policy**

The PHA will identify participants whose identity verification has failed by reviewing EIV's Identity Verification Report on a monthly basis.

The PHA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate

documentation from the participant. When the PHA determines that discrepancies exist due to PHA errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly.

### **Third-Party Written and Oral Verification**

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to the PHA by the family. If written third-party verification is not available, the PHA must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

### **Written Third-Party Verification [Notice PIH 2010-19]**

Written third-party verification documents must be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

The PHA is required to obtain, two months consecutive pay stubs, or at a minimum two pay stubs for determining annual income from wages.

The PHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible.

#### **MMPHA Policy**

The PHA will diligently seek third-party verification using a combination of written and oral requests to verification sources. Information received orally from third parties may be used either to clarify information provided in writing by the third party or as independent verification when written third-party verification is not received in a timely fashion.

The PHA may mail, fax, e-mail, or hand deliver third-party written verification requests and will accept third-party responses using any of these methods. The PHA will send a written request for verification to each required source within 5 business days of securing a family's authorization for the release of the information and give the source 10 business days to respond in writing. If a response has not been received by the 11<sup>th</sup> day, the PHA will request third-party oral verification.

The PHA will make a minimum of two attempts, one of which may be oral, to obtain third-party verification. A record of each attempt to contact the third-party source (including no-answer calls) and all contacts with the source will be documented in the file. Regarding third-party oral verification, PHA staff will record in the family's file the

name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

When any source responds verbally to the initial written request for verification the PHA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

If a third party agrees to confirm in writing the information provided orally, the PHA will wait no more than 5 business days for the information to be provided. If the information is not provided by the 6<sup>th</sup> day, the PHA will use any information provided orally in combination with reviewing family-provided documents.

### **When Third-Party Information is Late**

When third-party verification has been requested and the timeframes for submission have been exceeded, the PHA will use the information from documents on a provisional basis. If the PHA later receives third-party verification that differs from the amounts used in income and rent determinations and it is past the deadline for processing the reexamination, the PHA will conduct an interim reexamination to adjust the figures used for the reexamination, regardless of the PHA's interim reexamination policy.

### **When Third-Party Verification is not required**

#### **Primary Documents**

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

#### **Certain Assets and Expenses**

The PHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28]. The PHA will determine third-party verification is not available if the asset or expense involves an insignificant amount, making it not cost-effective or reasonable to obtain third-party verification [VG, p. 15].

#### **MMPHA Policy**

The PHA will use review of documents in lieu of requesting third-party verification when the market value of an individual asset or an expense is less than \$500 annually and the family has original documents supporting the declared amount.

### **Tenant Declaration Self-Certification**

#### **MMPHA Policy**

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the PHA.

The PHA may require a family to certify a family member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to the PHA and must be signed by the family member whose information or status is being verified. All self-certifications must be signed in the presence of a PHA representative or PHA notary public.

**Verifying Family Information**

**Verification of Legal Identity**

**MMPHA Policy**

The PHA will require families to furnish verification of legal identity for each household member.

<b>Verification of Legal Identity for Adults</b>	<b>Verification of Legal Identity for Children</b>
Certificate of birth, naturalization papers	Certificate of birth
Church issued baptismal certificate	Adoption papers
Current, valid driver's license or Department of Motor Vehicles identification card	Custody agreement
U.S. military discharge (DD 214)	Health and Human Services ID
U.S. passport	School records
Employer identification card	

If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided and at the PHA’s discretion, a third party who knows the person may attest to the person’s identity. The certification must be provided in a format acceptable to the PHA and be signed in the presence of a PHA representative or PHA notary public.

Legal identity will be verified on an as needed basis.

**Social Security Numbers [24 CFR 5.216 and HCV GB, p. 5-12]**

For every family member, the family must provide documentation of a valid social security number (SSN).

**MMPHA Policy**

The PHA will accept as documentation of a valid social security number (SSN) a social security card or a print-out from the Social Security Administration attesting to a valid social security number. An original SSA-issued document, which contains the name and SSN of the individual.

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

The PHA will instruct the family to obtain a duplicate card from the local Social Security Administration (SSA) office.



For individuals who are at least 62 years of age and are unable to submit the required documentation of their SSN within the initial 60-day period, the PHA will grant an additional 60 calendar days to provide documentation.

If the family reports an SSN but cannot provide acceptable documentation of the number, the PHA will require a self-certification stating documentation of the SSN cannot be provided at this time. The PHA will require documentation of the SSN within 30 calendar days from the date of the family member's self-certification mentioned above. If the family is an applicant, assistance cannot be provided until proper documentation of the SSN is provided. Social security numbers must be verified only once during continuously assisted occupancy.

If any family member obtains an SSN after admission to the program, the new SSN must be disclosed at the next regularly scheduled reexamination. In addition, if a child reaches the age of 6 and has no SSN, the parent or guardian must execute a self-certification stating that the child has no SSN at the next regularly scheduled reexamination.

The social security numbers of household members, such as live-in aids, must be verified for the purpose of conducting criminal background checks.

### **Document of Age**

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

#### **MMPHA Policy**

If an official record of birth or evidence of social security retirement benefits cannot be provided, the PHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

Age must be verified only once during continuously assisted occupancy.

### **Family Relationships**

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

#### **MMPHA Policy**

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

## **Marriage**

### **MMPHA Policy**

If the PHA has reasonable doubts about a marital relationship, the PHA will require the family to document the marriage.

A marriage certificate generally is required to verify that a couple is married.

In the case of a common law marriage, the couple must demonstrate they hold themselves to be married (e.g., using the same last name, filing joint income tax returns, or owning joint property or assets).

## **Separation or Divorce**

### **MMPHA Policy**

If the PHA has reasonable doubts about a separation or divorce, the PHA will require the family to document the divorce, or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

If no court document is available, documentation from a community-based agency will be accepted.

## **Absence of Adult Member**

### **MMPHA Policy**

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

## **Foster Children and Foster Adults**

### **MMPHA Policy**

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

## **Verifications of Student Status**

### **General Requirements**

#### **MMPHA Policy**

The PHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

- The family reports full-time student status for an adult other than the head, spouse, or co head.

- The family reports childcare expenses to enable a family member to further his or her education.
- The family includes a student enrolled in an institution of higher education.

### **Restrictions on Assistance to Students Enrolled in Institutions of Higher Education**

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

#### **MMPHA Policy**

In accordance with the verification hierarchy the PHA will determine whether the student is exempt from the restrictions in 24 CFR 5.612 by verifying any one of the following exemption criteria:

The student is enrolled at an educational institution that does not meet the definition of institution of higher education in the Higher Education Act of 1965.

- The student is at least 24 years old.
- The student is a veteran.
- The student is married.
- The student has at least one dependent child.
- The student is a person with disabilities and was receiving assistance prior to November 30, 2005.

If the PHA cannot verify at least one of these exemption criteria, the PHA will conclude that the student is subject to the restrictions on assistance at 24 CFR 5.612. In addition to verifying the student's income eligibility, the PHA will then proceed to verify either the student's parents' income eligibility or the student's independence from his/her parents (see below).

### **Independent Student**

#### **MMPHA Policy**

The PHA will verify a student's independence from his/her parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:

Either reviewing and verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of independent student.

Reviewing the student's prior year income tax returns to verify the student is independent or verifying the student meets the U.S. Department of Education's definition of independent student.

Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the

amount of support is \$0, except in cases in which the PHA determines that the student is a vulnerable youth.

### **Documentation of Disability**

The PHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The PHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA will not place this information in the tenant file. Under no circumstances will the PHA request a participant's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at <http://www.hhs.gov/ocr/privacy/>.

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- ❖ Inquiry into an applicant's ability to meet the requirements of ownership or tenancy.
- ❖ Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability.
- ❖ Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability.
- ❖ Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance.
- ❖ Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

### **Family Members Receiving SSA Disability Benefits**

Verification of the receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions [VG, p. 23].

#### **MMPHA Policy**

For family members claiming disability who receive disability benefits from the SSA, the PHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system when it is available. If documentation from HUD's EIV System is not available, the PHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), the PHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant or participant receives the benefit verification letter, they will be required to provide it to the PHA.

### **Family Members Not Receiving SSA Disability Benefits**

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.603.

#### **MMPHA Policy**

For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

### **Citizenship or Eligible Immigration Status [24 CFR 5.508]**

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. A detailed discussion of eligibility requirements is in the Eligibility chapter. This verifications chapter discusses HUD and PHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously assisted occupancy. [24 CFR 5.508(g)(5)]

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

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The PHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

#### **MMPHA Policy**

Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless the PHA receives information indicating that an individual's declaration may not be accurate.

#### **Eligible Immigrants**

##### **Documents Required**

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance.

**PHA Verification** [HCV GB, pp. 5-3 and 5-7]

For family members aged 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in this plan. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the PHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

The PHA will follow all USCIS protocols for verification of eligible immigration status.

**Verification of Preference Status**

The PHA must verify any preferences claimed by an applicant.

**MMPHA Policy**

- ❖ The PHA will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding. The PHA will verify this preference using the PHA's termination records.
- ❖ The PHA will offer a preference to any family that is homeless as defined by most current HUD regulations. The PHA will verify homelessness through one of the following:
  - ❖ Letter from an Emergency Shelter
  - ❖ For those sleeping in a place not fit for human habitation (i.e., car, camp, park) a letter or documentation from a police department, social service worker, or other case worker knowledgeable of the living conditions proving homeless.
  - ❖ Letter or eviction notice, with subsequent court hearing information from individual family member or another person (landlord) documenting the individual is in immediate danger of becoming homeless (i.e., eviction) within 14 days.
  - ❖ Proof that someone is trading sex for housing or is being trafficked.
- ❖ The PHA will offer a preference to any family that is currently in a Domestic Violence Shelter as verified by a letter from the shelter.
- ❖ Proof that someone left home due to financial abuse or threats of abuse and have no safe, alternative housing.
- ❖ The PHA will offer a preference to any family that is currently a resident of a Federally Declared Natural Disaster Area as verified by a FEMA issued disaster number.
- ❖ The PHA will offer a preference to any family that is currently a resident of a State Declared Natural Disaster Area as verified by a SEMA issued disaster number.

## **Verifying Income and Assets**

The income and subsidy section of this plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides PHA policies that supplement the general verification procedures specified earlier in this section.

### **Earned Income and Tips**

#### **MMPHA Policy**

Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

### **Wages**

#### **MMPHA Policy**

For wages other than tips, the family must provide two months consecutive check stubs, or a minimum of two pay stubs. A letter from employer indicating the employer's rate of pay, how often they get paid, and number of hours expected on each paycheck is permissible as stated in our third-party verification process.

### **Business and Self Employment Income**

#### **MMPHA Policy**

Business owners and self-employed persons will be required to provide:

- An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted, and the business owner or self-employed person must certify to its accuracy.
- All schedules completed for filing federal and local taxes in the preceding year.
- If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.
- The PHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.
- At any reexamination, the PHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.
- If a family member has been self-employed less than three (3) months, the PHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months, the PHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

### **Periodic Payments and Payments in Lieu of Earnings Social Security/SSI Benefits:**

To verify the SS/SSI benefits of applicants, the PHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), the PHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant has received the benefit verification letter, they will be required to provide it to the PHA.

To verify the SS/SSI benefits of participants, the PHA will obtain information about social security/SSI benefits through the HUD EIV System or the Tenant Assessment Subsystem (TASS). If benefit information is not available in HUD systems, the PHA will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) the PHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the participant has received the benefit verification letter, they will be required to provide it to the PHA.

### **Alimony or Child Support**

#### **MMPHA Policy**

The PHA will seek verification for alimony and child support. Verification will be sought in the following order.

If payments are made through a state or local entity, the PHA will request a record of payments for the past 12 months and request that the entity disclose any known information about the likelihood of future payments.

- ❖ Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules.
- ❖ Copy of the latest check and/or payment stubs.
- ❖ Third-party verification from the person paying the support.
- ❖ Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received.

If the family declares that it **receives irregular or no payments**, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

- ❖ A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts.
- ❖ If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

Note: Families are not required to undertake independent enforcement action.



## **Assets and Income from Assets**

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

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. The PHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

#### **MMPHA Policy**

The PHA will verify the value of assets disposed of only if:

The PHA does not already have a reasonable estimation of its value from previously collected information, or the amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a \$10,000 certificate of deposit at the last annual reexamination and the PHA verified this amount. Now the person reports that she has given this \$10,000 to her son.

The PHA has a reasonable estimate of the value of the asset; therefore, re-verification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately \$5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the PHA will verify the value of this asset

## **Retirement Accounts**

### **MMPHA Policy**

When third-party verification is not available the type of original document that will be accepted depends upon the family member's retirement status.

Before retirement, the PHA will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

Upon retirement, the PHA will accept an original document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.

After retirement, the PHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

## **Income from Excluded Sources**

A detailed discussion of excluded income is provided in the income and subsidy section of this plan. The PHA must obtain verification for income exclusions only if, without verification, the

PHA would not be able to determine whether the income is to be excluded. For example: If a family's 16-year-old has a job at a fast-food restaurant, the PHA will confirm that PHA records verify the child's age but will not send a verification request to the restaurant. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

**MMPHA Policy**

The PHA will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family share (as is the case with the earned income disallowance). In all other cases, the PHA will report the amount to be excluded as indicated on documents provided by the family.

**Zero Annual Income Status**

**MMPHA Policy**

The PHA will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SSI, etc., are not being received by families claiming to have zero annual income. Families will be required to re-certify every three months until their monthly income exceeds \$200.

**Student Financial Assistance**

Any financial assistance, in excess of amounts received for tuition, that a person attending an institution of higher education receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children or is residing with parents who are seeking or receiving HCV assistance [24 CFR 5.609(b) (9) and FR 4/10/06].

For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student financial assistance is excluded from annual income [24 CFR 5.609(c)(6)]. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education. Excluded amounts are verified only if, without verification, the PHA would not be able to determine whether or to what extent the income is to be excluded

**MMPHA Policy**

For a student subject to having a portion of his/her student financial assistance included in annual income in accordance with 24 CFR 5.609(b)(9), the PHA will request third-party written verification of both the source and the amount from the educational institution attended by the student as well as from any other person or entity providing such assistance, as reported by the student.

In addition, the PHA will request written verification from the institution of higher education regarding the student's tuition amount.

If the PHA is unable to obtain third-party written verification of the requested information, the PHA will pursue other forms of verification following the verification hierarchy.

### **Parental Income of Students Subject to Eligibility Restrictions**

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, and does not have a dependent child, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents in accordance with PHA policy [24 CFR 5.612 and FR 4/10/06, p. 18146].

This provision does not apply to students residing with parents who are seeking or receiving HCV assistance. It is limited to students who are seeking or receiving assistance on their own, separately from their parents.

#### **MMPHA Policy**

If the PHA is required to determine the income eligibility of a student's parents, the PHA will request an income declaration and certification of income from the appropriate parent(s). MMPHA will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to the PHA. The required information must be submitted (postmarked) within 10 days of the date of the PHA's request or within any extended timeframe approved by the PHA.

The PHA reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

### **Verifying Mandatory Deductions**

#### **Dependent and Elderly/Disabled Household Deductions**

The dependent and elderly/disabled family deductions require only that the PHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

#### **Dependent Deduction**

The PHA must verify that:

- ❖ Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or co-head of the family and is not a foster child.
- ❖ Any person aged 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full-time student.

### **Elderly/Disabled Family Deduction**

See the eligibility section for a definition of elderly and disabled families. The PHA must verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

### **Medical Expense Deduction**

Policies related to medical expenses are found in the income and subsidy section. The amount of the deduction will be verified following the standard verification procedures.

### **Amount of Expense**

#### **MMPHA Policy**

Medical expenses will be verified through:

Written third-party documents provided by the family, such as pharmacy printouts or receipts.

The PHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The PHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

Written third-party verification forms if the family is unable to provide acceptable documentation.

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, the PHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

### **Eligible Household**

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62, or a person with disabilities. The PHA must verify that the family meets the definition of an elderly or disabled family provided in the Eligibility section of this plan.

### **Qualified Expenses**

To be eligible for the medical expense's deduction, the costs must qualify as medical expenses.

### **Unreimbursed Expenses**

To be eligible for the medical expense's deduction, the costs must not be reimbursed by another source.

#### **MMPHA Policy**

The family will be required to certify that medical expenses are not paid or reimbursed to the family from any source.

### **Expenses Incurred in Past Years**

#### **MMPHA Policy**

When anticipated costs are related to on-going payment of medical bills incurred in past years, the PHA will verify:

- ❖ The anticipated repayment schedule.
- ❖ The amounts paid in the past, and
- ❖ Whether the amounts to be repaid have been deducted from the family's annual income in past years.

### **Disability Assistance Expenses**

Policies related to disability assistance expenses are found in the income and subsidy section chapter of this plan. The amount of the deduction will be verified following the standard verification procedures.

### **Attendant Care**

#### **Amount of Expense**

#### **MMPHA Policy**

The PHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

- Third-party verification form signed by the provider, when possible.
- If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source.
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

### **Auxiliary Apparatus**

#### **Expenses for auxiliary apparatus will be verified through:**

#### **MMPHA Policy**

Third-party verification of anticipated purchase costs of auxiliary apparatus. If third-party is not possible, billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.

If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

#### **In addition, the PHA must verify that:**

The family member for whom the expense is incurred is a person with disabilities.

The expense permits a family member, or members, to work.

The expense is not reimbursed from another source.

### **Family Member is a Person with Disabilities**

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The PHA will verify that the expense is incurred for a person with disabilities.

### **Family Member(s) Permitted to Work**

The PHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

#### **MMPHA Policy**

The PHA will seek third-party verification from a Rehabilitation Agency or knowledgeable medical professional indicating the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work.

If third-party and document review verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

### **Unreimbursed Expenses**

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

#### **MMPHA Policy**

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

### **Child Care Expenses**

Policies related to childcare expenses are found in the income and subsidy section of this plan. The amount of the deduction will be verified following the standard verification procedures.

In addition, the PHA must verify that:

- ❖ The child is eligible for care (12 or younger).
- ❖ The costs claimed are not reimbursed.
- ❖ The costs enable a family member to pursue an eligible activity.
- ❖ The costs are for an allowable type of childcare.
- ❖ The costs are reasonable.

### **Eligible Child**

To be eligible for the childcare deduction, the costs must be incurred for the care of a child under the age of 13. The PHA will verify that the child being cared for (including foster children) is under the age of 13.

### **Unreimbursed Expense**

To be eligible for the childcare deduction, the costs must not be reimbursed by another source.

#### **MMPHA Policy**

The family (and the care provider) will be required to certify that the childcare expenses are not paid or reimbursed to the family from any source.

### **Pursuing an Eligible Activity**

The PHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

### **Information to be Gathered**

#### **MMPHA Policy**

The PHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

### **Seeking Work**

Whenever possible the PHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment.) In such cases the PHA will request verification from the agency of the member's job seeking efforts to date and require the family to submit to the PHA any reports provided to the other agency.

In the event third-party verification is not available, the PHA will provide the family with a form on which the family member must record job search efforts. The PHA will review this information at each subsequent reexamination for which this deduction is claimed.

### **Furthering Education**

The PHA will ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the childcare is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

### **Gainful Employment**

The PHA will seek verification from the employer of the work schedule of the person who is permitted to work by the childcare. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified.

### **Allowable Type of Child Care**

The type of care to be provided is determined by the family but must fall within certain guidelines.

#### **MMPHA Policy**

The PHA will verify the type of childcare selected by the family is allowable.

The PHA will verify the fees paid to the childcare provider cover only childcare costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The PHA will verify the childcare provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

### **Reasonableness of Expenses**

#### **MMPHA Policy**

Only reasonable childcare costs can be deducted.

The actual costs the family incurs will be compared with the PHA's established standards of reasonableness for the type of care in the locality to ensure the costs are reasonable. If the family presents a justification for costs that exceed typical costs in the area, the PHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

### **Chapter 8 - Housing Quality Standards/National Standard For The Physical Inspection of Real Estate AND Rent Reasonableness Determinations** **[24 CFR 982 Subpart I and 24 CFR 982.507]**

HUD requires that all units occupied by families receiving Housing Choice Voucher assistance meet HUD's Housing Quality Standards (HQS)/National Standard of the Physical Inspection of Real Estate Standards (NSPIRE).

All units must pass an HQS/NSPIRE inspection prior to the approval of a lease and at least once every 12 months during the term of the contract, and at other times as needed, to determine that the unit meets HQS/NSPIRE standards. HUD also requires PHAs to determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

### **General HUD Requirements**

HUD's performance and acceptability standards for HCV-assisted housing.

- ❖ Inside



- ❖ Outside
- ❖ Units

Under the Fair Housing Act, a reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas. Examples include the installation of a ramp into a building, lowering the entry threshold of a unit, or the installation of grab bars in a bathroom. Under the Fair Housing Act, prohibited discrimination includes a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.

Under Section 504, a housing provider is required to provide and pay for the structural modification as a reasonable accommodation unless it amounts to an undue financial and administrative burden or a fundamental alteration of the program. If an undue burden or fundamental alteration exists, the recipient is still required to provide any other reasonable accommodation up to the point that would not result in an undue financial and administrative burden on the particular recipient and/or constitute a fundamental alteration of the program.

**Clarifications of HUD Requirements**

**MMPHA Policy**

As permitted by HUD, the PHA has adopted the following specific requirements that elaborate on HUD standards.

STANDARDS	Inspectable area(s) standard applies to:		
	Unit	Inside	Outside
<a href="#"><u>Address and Signage Standard</u></a>			Y
<a href="#"><u>Bathtub and Shower Standard</u></a>	Y	Y	
<a href="#"><u>Cabinet and Storage Standard</u></a>	Y	Y	
<a href="#"><u>Call-for-Aid System Standard</u></a>	Y	Y	

<a href="#"><u>Carbon Monoxide Alarm Standard</u></a>	Y	Y	
<a href="#"><u>Ceiling Standard</u></a>	Y	Y	
<a href="#"><u>Chimney Standard</u></a>	Y	Y	Y
<a href="#"><u>Clothes Dryer Exhaust Ventilation Standard</u></a>	Y	Y	Y
<a href="#"><u>Cooking Appliance Standard</u></a>	Y	Y	
<a href="#"><u>Door – Entry Standard</u></a>	Y	Y	
<a href="#"><u>Door – Fire Labeled Standard</u></a>	Y	Y	Y
<a href="#"><u>Door – General Standard</u></a>	Y	Y	Y
<a href="#"><u>Drain Standard</u></a>	Y	Y	Y
<a href="#"><u>Egress Standard</u></a>	Y	Y	
<a href="#"><u>Electrical – Conductor, Outlet, and Switch</u></a>	Y	Y	Y
<a href="#"><u>Electrical – GFCI or AFCI – Outlet or Breaker Standard</u></a>	Y	Y	Y

<a href="#">Electrical – Service Panel Standard</a>	Y	Y	Y
<a href="#">Elevator Standard</a>		Y	
<a href="#">Exit Sign Standard</a>		Y	Y
<a href="#">Fence and Gate Standard</a>			Y
<a href="#">Fire Escape Standard</a>			Y
<a href="#">Fire Extinguisher Standard</a>	Y	Y	Y
<a href="#">Flammable and Combustible Item Standard</a>	Y	Y	Y
<a href="#">Floor Standard</a>	Y	Y	
<a href="#">Food Preparation Area Standard</a>	Y	Y	
<a href="#">Foundation Standard</a>	Y	Y	Y
<a href="#">Garage Door Standard</a>	Y	Y	Y
<a href="#">Grab Bar Standard</a>	Y	Y	
<a href="#">Guardrail Standard</a>	Y	Y	Y

<a href="#">Handrail Standard</a>	Y	Y	Y
<a href="#">Heating, Ventilation, and Air Conditioning (HVAC) Standard</a>	Y	Y	
<a href="#">Infestation Standard</a>	Y	Y	Y
<a href="#">Leak – Gas or Oil</a>	Y	Y	Y
<a href="#">Leak – Sewage System</a>	Y	Y	Y
<a href="#">Leak – Water</a>	Y	Y	Y
<a href="#">Lighting – Auxiliary Standard</a>		Y	Y
<a href="#">Lighting – Exterior Standard</a>			Y
<a href="#">Lighting – Interior Standard</a>	Y	Y	
<a href="#">Litter Standard</a>		Y	Y
<a href="#">Minimum Electrical and Lighting</a>	Y		
<a href="#">Mold-Like Substance Standard</a>	Y	Y	

<a href="#">Parking Lot Standard</a>			Y
<a href="#">Potential Lead-Based Paint Hazards – Visual Assessment Standard</a>	Y	Y	Y
<a href="#">Private Roads and Driveways Standard</a>			Y
<a href="#">Refrigerator Standard</a>	Y	Y	
<a href="#">Retaining Wall Standard</a>			Y
<a href="#">Roof Assembly Standard</a>			Y
<a href="#">Sharp Edges Standard</a>	Y	Y	Y
<a href="#">Sidewalk, Walkway, and Ramp Standard</a>			Y
<a href="#">Sink Standard</a>	Y	Y	
<a href="#">Site Drainage Standard</a>			Y
<a href="#">Smoke Alarm Standard</a>	Y	Y	
<a href="#">Sprinkler Assembly Standard</a>	Y	Y	Y

<a href="#">Steps and Stairs Standard</a>	Y	Y	Y
<a href="#">Structural System Standard</a>	Y	Y	Y
<a href="#">Toilet Standard</a>	Y	Y	
<a href="#">Trash Chute Standard</a>		Y	
<a href="#">Trip Hazard Standard</a>	Y	Y	Y
<a href="#">Ventilation</a>	Y	Y	
<a href="#">Wall – Exterior Standard</a>			Y
<a href="#">Wall – Interior Standard</a>	Y	Y	
<a href="#">Water Heater Standard</a>	Y	Y	Y
<a href="#">Window Standard</a>	Y	Y	Y

### **Life Threatening Conditions**

The life-threatening category includes deficiencies that, if evident in the home or on the property, present a high risk of death or severe illness or injury to a resident.

If an owner fails to correct life-threatening conditions as required by the PHA, the housing assistance payment will be abated, and the HAP contract will be terminated.

If a family fails to correct a family caused life-threatening condition as required by the PHA, the PHA may terminate the family's assistance.

The owner will be required to repair an inoperable smoke detector unless the PHA determines the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the detector within 24 hours.

Owners will be notified in writing of any deficiencies. Any emergency will be corrected immediately. Any deficiencies that are a threat to life must be corrected within 24 hours of notice or termination of the contract will result. Any other deficiencies must be corrected within thirty (30) days. If the deficiencies are not corrected, the Owner's HAP will be abated in accordance with HUD regulations. If the tenant causes the deficiencies, a notice will inform the family that corrections must be completed within a specified time frame and if the corrections are not completed the family will be terminated.

#### **MMPHA Policy**

MMPHA Housing Staff/Inspector cover a large service area, and it is not always possible for them to return to a unit within 24 hours to re-inspect life threatening repairs. The owner and/or tenant must certify in writing the repairs were completed. This statement and all receipts necessary for repairs must be submitted to the MMPHA Housing Staff/Inspector within 24 hours of the repair(s).

MMPHA will accept a handwritten statement.

Landlords and tenants can in writing, request an extension for repairs before the expiration date (30 days' time frame indicated in deficiency letter). Extension will be reviewed on a case-by-case basis.

Smoke detectors must be located one on each level and one in each bedroom.

#### **Abatement of Housing Assistance Payments**

If defects are not fixed within the allotted time, PHAs are to abate subsidy payments for a further 60 days (or other reasonable period established by the PHA). Tenants are protected from eviction due to subsidy payments being withheld or abated, and may terminate the lease in order to move. If repairs are not made and the PHA terminates the contract, the lease between the owner and tenant also terminates. The PHA must give the family at least an additional 90 days to find a new unit to lease with voucher assistance, extended if the PHA determines it to be necessary.

#### **MMPHA Policy**

MMPHA will make all HAP abatements effective as of the last day of month following the expiration of the PHA specified correction period (including an extension).

MMPHA will inspect the abated unit on the next available date after the owner's notification the work has been completed. Payment will resume effective on the day after the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use abatement as cause for eviction.

## **Violation of HQS/NSPIRE Space Standards [24 CFR 982.401, 24 CFR 982.403]**

A dwelling unit must:

- Provide adequate space and security for the family
- Have at least one bedroom or living/sleeping room for each two persons

A unit that does not meet these HQS/NSPIRE space standards is defined as overcrowded.

A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space [HCV GB p. 10-6]. A bedroom or living/sleeping room must have at least:

- One window
- Two electrical outlets in proper operating condition (permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets)

If the PHA determines that a unit is overcrowded because of an increase in family size or a change in family composition, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms.

### **HAP Contract Termination**

The PHA must decide how long any abatement period will continue before the HAP contract will be terminated. The PHA should not terminate the contract until the family finds another unit, providing the family does so in a reasonable time and must give the owner reasonable notice of termination. The PHA will issue a voucher to permit the family to move to another unit.

#### **MMPHA Policy**

Reasonable notice of HAP contract termination by the PHA is 30 days.

If the landlord has not made the required 30-day repairs within the time period (unless extended by the MMPHA), the landlord will be given a 30-day notice that tenant will be issued a moving voucher and can relocate to another unit. If the tenant does not repair tenant caused deficiencies within the 30-day period, the landlord will be given a 30-day notification of family termination.

### **The Inspection Process**

#### **Types of Inspections**

The PHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

Initial Inspections: The PHA conducts initial inspections in response to a request from the family (RFTA form) to approve a unit for participation in the HCV program. The unit must pass HQS/NSPIRE inspection before the effective date of the HAP contract.



Annual Inspections: HUD requires the PHA to inspect each unit under lease at least annually to confirm the unit still meets HQS/NSPIRE. The inspection may be conducted in conjunction with the family's annual recertification but also may be conducted separately.

Special Inspections: A special inspection may be requested by the owner, the family or by a third party as a result of problems identified with a unit between annual inspections.

### **Quality Control Inspections**

HUD requires that a sample of units be inspected by a supervisor or other qualified individual to ensure HQS/NSPIRE is being enforced correctly and uniformly by all inspectors.

### **Notices and Scheduling**

The family must allow the PHA to inspect the unit at reasonable times with reasonable notice.

[24 CFR 982.551(d)]

#### **MMPHA Policy**

MMPHA schedules the inspection at least 364 days from the last inspection. Inspections are completed annually. The family is notified by letter stating the date of the upcoming inspection. In some cases, it is scheduled at the participant's income verification appointment. The inspection may be re-scheduled on a case-by-case basis. Inspections are done on normal working days between 8am and 5 pm. In the case of a life-threatening emergency, the PHA will give as much notice as possible, given the nature of the emergency.

The Housing Staff/Inspector can notify the landlord and/or tenant twenty-four hours (24 hour) prior to the scheduled inspection upon approval from the landlord and/or the tenant. The Housing Staff/Inspector will follow up with a letter to all parties involved. If the unit passes the initial inspection the first time, the PHA will schedule the next inspection within 364 days.

### **Owner and Family Inspection Attendance**

#### **MMPHA Policy**

HUD permits the PHA to set policy regarding family and owner presence at the time of inspection. When a family occupies the unit at the time of the inspection, an adult family member or a Representative who is over the age of 18 must be present for the inspection. If this is not possible, the inspection will be completed with the owner or owner's representative.

At initial inspection of a vacant unit, the PHA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted, but not required. As a last resort if the unit is vacant MMPHA will inspect the unit without the owner if the owner makes prior arrangements.

## **Initial HQS/NSPIRE Inspection [24 CFR 982.401(a)]**

### **Initial Inspections [FR Notice 1/18/17]**

The PHA may, but is not required to, approve assisted tenancy, and start HAP if the unit fails HQS/NSPIRE inspection, but only if the deficiencies identified are non-life threatening. Further, the PHA may, but is not required to, authorize occupancy if a unit passed an alternative inspection in the last 24 months.

#### **MMPHA Policy**

The unit must pass the HQS/NSPIRE inspection on or before the effective date of the HAP contract.

The PHA will not rely on alternative inspections and will conduct an HQS/NSPIRE inspection for each unit prior to executing a HAP contract with the owner.

### **Timing of Initial Inspections**

HUD requires the unit pass HQS/NSPIRE inspection before the effective date of the lease and HAP contract. HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS/NSPIRE, and notify the owner and family of the determination within 15 days of submission of the Request for Tenancy Approval (RFTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [24 CFR 982.305(b) (2)].

#### **MMPHA Policy**

MMPHA will schedule or have income eligibility done for the initial inspection within 15 business days of submission of the Request for Tenancy (RFTA) if the unit is available or as soon as the unit is available to determine whether the unit satisfies HQS/NSPIRE and notify the owner and family of the determination.

Look at the attachment at end of the admin plan for the landlord's guide to preparing for Section 8 HQS/NSPIRE Inspection. MMPHA policy is based on these guidelines.

### **Inspection Results and Re-inspections**

If any HQS/NSPIRE violations are identified, the owner will be notified of the deficiencies and given 10 calendar days to notify MMPHA if they are not going to correct them. If the owner is unwilling to correct the deficiencies the family must submit a new Request for Tenancy Approval for a different unit. If requested by the owner, the timeframe for the correcting the deficiencies may be extended by the PHA for good cause. The PHA will re-inspect the unit within 1 week of the date the owner notifies the PHA the required corrections have been made.

If the time period for correcting the deficiencies (or any PHA-approved extension) has elapsed, or the unit fails HQS/NSPIRE at the time of re-inspection, the PHA will notify the owner and the family that the unit has been rejected. The PHA may agree to conduct a second inspection, for good cause, at the request of the family and the owner.

Following the failed second inspection, the family must submit a new Request for Tenancy Approval for a different unit.

### **Utilities**

At initial lease-up the owner is responsible for demonstrating all utilities are in working order, including those utilities the family will be responsible for paying. If the utility service is not available for testing at the time of the initial inspection, the PHA will not complete the inspection. A re-inspection will be done only when the owner or the owner's representative advises the PHA that utilities are in service.

### **Appliances**

If the family is responsible for supplying the stove and/or refrigerator, the PHA will allow the stove or refrigerator to be placed in the unit after the unit has met all other HQS/NSPIRE requirement. The required appliances must be in place before the HAP contact is executed by the PHA. A confirmatory inspection will be scheduled within one week of notification to the PHA that the appliances have been installed. A self-certification regarding the appliances is working properly from either the tenant or landlord will be accepted.

### **Annual HQS/NSPIRE Inspections [24 CFR 982.405(a)]**

#### **MMPHA Policy**

Each unit under HAP contract must be inspected within 12 months of the last full HQS/NSPIRE inspection.

The PHA will not rely on alternative inspection standards.

### **Scheduling the Inspection**

Each unit under HAP contract must have an annual inspection no more than 364 days after the most recent inspection. If an adult family member cannot be present on the scheduled date, the family should make certain either a person over the age of 18 or the owner will be there to let the inspector in.

If the family misses the first scheduled appointment without requesting a new inspection date, the PHA will automatically schedule a second inspection. If the family misses two scheduled inspections without PHA approval, the PHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance.

### **Special Inspections**

The PHA will conduct a special inspection if the owner, family or another source report HQS/NSPIRE violations in the unit. The PHA will also conduct a Special Inspections upon request from either the tenant and/or landlord.

During a special inspection, the PHA **generally** will only inspect those deficiencies that reported. The inspector will record any additional HQS/NSPIRE deficiencies that are observed and will require the responsible party to make the necessary repairs.

### **Quality Control Inspections [24 CFR 982.405(b),]**

HUD requires a PHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is a consistency in the application of the HQS/NSPIRE.

The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

### **Inspection Results and Re-inspections for Units under HAP Contracts**

#### **Notification of Corrective Actions**

The owner and family will be notified in writing of the results of all inspections. When an inspection identifies HQS/NSPIRE failures, the PHA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

#### **MMPHA Policy**

When life threatening conditions are identified, the PHA will immediately notify both parties by telephone, cell phone, fax, or email if available. The notice will specify who is responsible for the correcting the violation. The corrective actions must take place within 24 hours of the PHA notice.

When failures that are not life threatening is identified, the PHA will send the owner and the family a written notification of the inspection results within 3 days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally, not more than 30 days will be allowed for correction.

The notice of inspection results will inform the owner that, if life threatening conditions are not corrected within 24 hours and non-life-threatening conditions are not corrected within the specified time frame (or any PHA-approved extension); the owner's HAP will be abated in accordance with PHA policy. Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any PHA-approved extension, if applicable) the family's assistance will be terminated in accordance with PHA policy.

## **Extensions**

For conditions that are life-threatening, the PHA cannot grant an extension to the 24-hour corrective action period. For conditions that are not life threatening, the PHA may grant an exception to the required time frames for correcting the violation, if the PHA determines that an extension is appropriate [24 CFR 982.404].

### **MMPHA Policy**

Extensions may be granted in cases where the PHA has determined the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control.

The length of the extension will be determined on a case-by-case basis, but will not exceed 30 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days once the weather conditions have subsided.

## **Re-inspections**

The PHA will conduct re-inspections immediately following the end of the corrective period or any PHA approved extension.

The family and owner will be given reasonable notice of the re-inspection appointment. If the deficiencies have not been corrected by the time of the re-inspection, the PHA will send a notice of abatement to the owner, or, in the case of family caused violations, a notice of termination to the family, in accordance with PHA policies. If the PHA is unable to gain entry to the unit in order to conduct the scheduled re-inspection, the PHA will consider the family to have violated its obligation to make the unit available for inspection. This will result in termination of the family's assistance. If repair(s) need to be made, depending on the repair(s), we can accept work orders, photos, receipt, and/or written statement.

## **Enforcing Owner Compliance**

If the owner fails to maintain the dwelling unit in accordance with HQS/NSPIRE, the PHA must take prompt and vigorous action to enforce the owner obligations.

## **HAP Abatement**

If an owner fails to correct HQS/NSPIRE deficiencies by the time specified by the PHA, HUD requires the PHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS/NSPIRE failures that are the family's responsibility.

### **MMPHA Policy**

MMPHA will make all HAP abatements effective as of the last day of month following the expiration of the PHA specified correction period (including an extension).

MMPHA will inspect the abated unit on the next available date after the owner's notification the work has been completed. Payment will resume effective on the day after the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use abatement as cause for eviction.

### **HAP Contract Termination**

The PHA must decide how long any abatement period will continue before the HAP contract will be terminated. The PHA should not terminate the contract until the family finds another unit, providing the family does so in a reasonable time and must give the owner reasonable notice of termination. The PHA will issue a voucher to permit the family to move to another unit.

The maximum length of time HAP may be abated is 30 days. However, if the owner completes corrections and notifies the PHA before the termination date of the HAP contract, the PHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

### **MMPHA Policy**

Reasonable notice of HAP contract termination by the PHA is 30 days.

If the landlord has not made the required 30-day repairs within the time period (unless extended by the MMPHA), the landlord will be given a 30-day notice that tenant will be issued a moving voucher and can relocate to another unit. If the tenant does not repair tenant caused deficiencies within the 30-day period, the landlord will be given a 30-day notification of family termination.

### **Enforcing Family Compliance with HQS/NSPIRE [24 CFR 982.404(b)]**

Families are responsible for correcting any HQS/NSPIRE violations. If the family fails to correct a violation within the period allowed by the PHA (and any extensions), the PHA will terminate the family's assistance.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

### **Rent Reasonableness**

#### **[24 CFR 982.507]**

No HAP contract can be approved until the PHA has determined the rent for a unit is reasonable. The purpose of rent reasonableness test is to ensure a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises.

## **Methodology in Administrative Plan**

### **MMPHA Policy**

MMPHA shall certify that, for each unit for which it approves a lease, the contract rent for such unit is:

1. Reasonable in relation to rents currently being charged for comparable units in the private, unassisted market: taking into account the location, quality, size, type of unit, age of unit, amenities, housing services, maintenance, handicapped accessible and utility allowance for tenant-paid utilities and not in excess of rent currently being charged by the owner for comparable unassisted units.
2. MMPHA shall determine the rent to the owner is reasonable for each unit leased prior to the initial lease approval, before any requested increase of rent to the owner, if directed by HUD or if the FMR decreases by 5% or more.
3. MMPHA shall maintain for three (3) years all certifications and relevant documentation for inspection by HUD.
4. When a unit is located in an apartment complex, MMPHA will obtain information from the owners so it can be certified the rents being charged to the tenants in Section 8 units are the same as rents being charged to tenants who are in unassisted units. If the owner/manager completes section 12a on the Request for Tenancy Approval (HUD form 52517). MMPHA may use this information to determine, and document rent reasonableness for comparable unassisted units in the complex.
5. Documentation supporting the contract rent and the reasonableness as demonstrated by the rent comparability form will be contained in each tenant file. It is MMPHA's intent to have two (2) rent comparability forms in each tenant file.

## **System Based on United States Department of Housing and Urban Development Factors**

The attached Rent Comparability Form (see attachments) contains all of the HUD factors required to compare Section 8 assisted units to unassisted units. MMPHA will have a minimum of two (2) different comparability forms that have been completed within the last twelve (12) months in each tenant file for comparison. If it is not possible to obtain two different comparable it will be noted in the file as to why.

## **Unassisted Units in Market as Comparable**

### **MMPHA Policy**

MMPHA will have five (5) to ten (10) examples of unassisted units using the Rent Comparability Form for each county within the jurisdiction. If a comparable cannot be

located in that county, MMPHA may use a comparable for a unit within the same market area. An example of this would be four (4) bedroom or larger homes, or for mobile homes. The examples of unassisted units will be divided into the following categories:

- One-bedroom examples for apartments, mobile homes, and houses.
- Two-bedroom examples for apartments, mobile homes, and houses.
- Three-bedroom examples for apartments, mobile homes, and houses.
- Four-bedroom examples for apartments, mobile homes, and houses.

### **Documented at Appropriate Time**

#### **MMPHA Policy**

After receiving a Request for Tenancy Approval (RTFA) form, Housing staff will compare the proposed rent on the RTFA to the examples of the Rent Comparability Forms on file for the appropriate county/market area and appropriate type of unit.

The Housing Staff/Inspector determines, upon inspection of the proposed new unit that the proposed new unit is comparable to two (2) similar units in the area. If a comparable unassisted unit cannot be located within the proposed rent range requested, the Assisted Housing Representative/Housing Inspector will contact the Owner/Manager of the proposed unit to negotiate a reasonable rent based on comparable.

When at least two (2) comparable are identified, the Housing Staff/Inspector will notate which of the two (2) Rent Comparability Forms best compares with the unit and document the unassisted units are comparable and certify reasonableness on the unit by signing the Rent Reasonableness Certification form. If two comparable are not available, the Assisted Housing Representative must state why two are not attached. A copy of the Rent Comparability forms will be attached to the certification form.

After inspecting the unit for HQS/NSPIRE at the annual recertification, Housing staff will make adjustments, if there has been a rent increase, compare the unit with Rent Comparability forms in the jurisdiction and certify the new rent is reasonable on the unit by signing the Rent reasonableness Certification form.

## **Chapter 9– GENERAL LEASING POLICIES**

### **General Leasing Policies**

In order for the PHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the PHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305 (a)].
- The unit must be inspected by the PHA and meet the Housing Quality Standards (HQS/NSPIRE) [24 CFR982.305 (a)].
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305 9a]



- The rent to be charged by the owner for unit must be reasonable [24 CFR 982.305(a)]. The owner must be an eligible owner, approvable by the PHA, with no conflicts of interest [24 CFR 982/306].
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)].

### **Tenant Screening**

The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a) (1)]

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, the PHA must inform the owner screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307 (a) (2)].

The PHA must provide the owner with the family's current and prior address (as shown in the PHA records); and the name and address (if known to the PHA) of the landlord at the family's current and prior address. [24 CFR 982.307 (b) (2)]

The PHA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307 (b) (3)].

#### **MMPHA Policy**

MMPHA will not screen applicants for family behavior or suitability for tenancy.

### **Requesting Tenancy Approval [Form HUD-52517]**

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the PHA to approve the assisted tenancy in the selected unit.

#### **MMPHA Policy**

The owner and/or the family must submit the following:

- Request for Tenancy Approval (RFTA) packet
- Completed Request for Tenancy Approval - Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum - Form HUD-52641-A
- The landlord's W-9-Request for Taxpayer Identification Number and Certification
- Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards Form.
- Violence Against Women and Justice Department Reauthorization Act of 2005 Lease Addendum - Form HUD-91067

The RFTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent and the requested beginning date of the lease, necessary for the PHA to determine whether to approve the assisted tenancy in this unit.

Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

Owners must certify they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

Both the RFTA and the proposed lease must be submitted no later than the expiration date stated on the voucher.

#### **MMPHA Policy**

- The RFTA must be signed by both the family and the owner.
- The owner may submit the RTA on behalf of the family.
- Completed RFTA (including the proposed dwelling lease) must be submitted to the PHA.
- The family may not submit, and the PHA will not process, more than one (1) RFTA at a time.
- The PHA will also review the terms of the RFTA for consistency with the terms of the proposed lease.

Because of the time sensitive nature of the tenancy approval process, the PHA will attempt to communicate with the owner and family by phone. The PHA will use mail when the parties cannot be reached by phone.

#### **Owner Participation**

The PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. There are also criteria for which the PHA must disapprove an owner. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

#### **Eligible Units**

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the PHA's jurisdiction. This includes the dwelling unit they are currently occupying.

### **Ineligible Units [24 CFR 982.352(a)]**

The PHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

### **PHA-Owned Units [24 CFR 982.352(b)]**

Otherwise, eligible units that are owned or substantially controlled by the PHA issuing the voucher may also be leased in the voucher program. In order for a PHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the PHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a PHA-owned unit without any pressure or steering by the PHA.

### **Special Housing Types [24 CFR 982 Subpart M]**

HUD regulations permit, but do not generally require, the PHA to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option.

The regulations do require the PHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

### **Duplicative Assistance [24 CFR 982.352(c)]**

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance.
  - Other Section 8 assistance (including other tenant-based assistance); Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974).
  - Section 101 rent supplements.
  - Section 236 rental assistance payments.
  - Tenant-based assistance under the HOME Program.
  - Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration).
  - Any local or State rent subsidy.
- Section 202 supportive housing for the elderly; Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with

disabilities (Section 162 assistance); or

Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

### **Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]**

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD.

#### **Approval**

##### **MMPHA Policy**

Upon receipt of a family's written notification that it wishes to move, the PHA will determine whether the move is approvable in accordance with the regulations and policies.

#### **Reexamination of Family Income and Composition**

##### **MMPHA Policy**

For families approved to move to a new unit within the PHA's jurisdiction, the PHA will perform a new annual reexamination in accordance with the policies set forth in this plan. For families moving into, or families approved to move out of the PHA's jurisdiction under portability, the PHA will follow the policies set forth in this section.

#### **Voucher Issuance and Briefing**

##### **MMPHA Policy**

For families approved to move to a new unit within the PHA's jurisdiction, the PHA will issue a new voucher within 10 business days of the PHA's approval to move. No briefing is required for these families. The PHA will follow policies set forth on voucher terms, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees in writing and the PHA approves. Otherwise, the family will lose its assistance.

For families moving into or families moving out of the PHA's jurisdiction under portability, the PHA will follow policies set forth in this section.

#### **Housing Assistance Payments [24 CFR 982.311(d)]**

When a family moves out of an assisted unit, the PHA may not make any housing assistance payment to the owner for any month after the month the family moves out of the unit.

If a participant family moves from an assisted unit with continuing 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.

### **Chapter 10– PORTABILITY**

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-base voucher assistance to lease a unit anywhere in the United States providing the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The first PHA is called the initial PHA. The second is called the receiving PHA.

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA bills the initial PHA for the family's housing assistance payments and the fee for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance out of its own program funds, and the initial PHA has no further relationship with the family.

The same PHA commonly acts as the initial PHA for some families and as the receiving PHA for others. Each role involves different responsibilities. The PHA will follow the rules and policies when it is acting as the initial PHA for a family. It will follow the rules and policies when it is acting as the receiving PHA for a family.

#### **Initial PHA Role**

##### **Allowable Moves under Portability**

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA provides the family with the contact information for the receiving PHAs that serve the area, and the family selects the receiving PHA. The family must inform the initial PHA which PHA it has selected. If the family prefers not to select the receiving PHA, the initial PHA will select the receiving PHA on behalf of the family [24 CFR 982.255(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the PHA's jurisdiction under portability. HUD regulations and PHA policy determine whether a family qualifies.

#### **Applicant Families**

Under HUD regulations, most applicant families qualify to lease a unit outside the PHA's jurisdiction under portability. However, HUD allows the PHA discretion to deny a portability

move by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding or grounds for denial and termination of assistance.

In addition, the PHA may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

#### **MMPHA Policy**

In determining whether or not to deny an applicant family permission to move under portability because the PHA lacks sufficient funding or has grounds for denying assistance to the family MMPHA will follow the policies of this section.

Applicant families must live in the PHA's jurisdiction at the time of the application and provide proof of residency before requesting portability.

Whether or not MMPHA has or is in the process of terminated existing leases due to insufficient funds.

The PHA will consider exceptions to this policy for purpose of reasonable accommodation or reasons related to domestic violence, dating violence, sexual assault, or stalking. However, any exception to this policy is subject to the approval of the receiving PHA [24 CFR 982.353 (c) (3)].

#### **Participant Families**

The Initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease. [24 CFR 982.353 (b)] VAWA creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence or stalking and who reasonably believes he or she was imminently threatened by harm from further violence if they remain in the unit.

#### **MMPHA Policy**

MMPHA will determine whether a participant family may move out of the PHA's jurisdiction with continued assistance in accordance with the regulations and policies. The PHA will notify the family in accordance with the approval policy.

#### **Determining Income Eligibility**

##### **Applicant Families**

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d) (3)]. The family must specify the area to which the family wishes to move.

##### **Participant Families**

The income eligibility of a participant family is not re-determined by MMPHA if the family moves to another PHA jurisdiction.

A new reexamination of family income and composition is required for an applicant family if they move into the MMPHA or remain in the MMPHA jurisdiction.

### **Briefing**

The regulations and policies on briefings in this plan require the PHA to provide information on portability to all applicant families who qualify to lease a unit outside the PHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

### **Voucher Issuance and Term**

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the PHA will follow the regulations and procedures.

#### **MMPHA Policy**

For participating families approved to move under portability, the PHA will issue a new voucher within 10 business days. The initial term of the voucher will be 90 days.

### **Vouchers Extensions and Expiration**

#### **MMPHA Policy**

MMPHA will approve no extensions to a voucher issued to an applicant or participant family porting out of the PHA's jurisdiction unless extenuating circumstances can be demonstrated by both the receiving PHA and the tenant. This policy will be reevaluated on a case-by-case basis.

### **Initial Contact with the Receiving PHA**

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA to expect the family [24 CFR 982.355 (c) (2)]. This means the initial PHA must contact the receiving PHA directly on the family's behalf [Notice PIH 2004-12]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355 (c) (2)].

#### **MMPHA Policy**

Because the portability process is time sensitive, MMPHA will notify the receiving PHA by phone and send them the portability paperwork by fax, email, US Mail.

### **Sending Documentation to the Receiving PHA**

The initial PHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part 1 filled out [Notice PIH 2004-12]
- A copy of the family's voucher [Notice PIH 2004-12]

- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary, in the case of an applicant family, family income and information in a format similar to that of form HUD-50058 [24 CFR 982.355(c) (4), Notice PIH-2004-12].
- Copies of the income verification backing up the form HUD-50058 [24 CFR 982.355(c) (4), Notice 2004-12] including EIV documentation.

### **Initial Billing Deadline [Notice PIH 2011-3]**

When the initial PHA sends form HUD-52665 to the receiving PHA, it specifies in Part 1 the deadline by which it must receive the initial billing notice from the receiving PHA. This initial billing submission must be completed and mailed by the receiving PHA within 10 working days of the HAP contract execution but no later than 60 days following the expiration date of the family voucher issued by in the initial PHA. If the initial PHA informs the receiving PHA that it will not honor a late billing, the initial PHA is not required to honor any billing notice received after the billing deadline. If the initial PHA still subsequently receives a late billing notice on behalf of the family, it simply returns the late Form HUD-52665 to the receiving PHA, and the receiving PHA must absorb the family. In certain circumstances, HUD may require the initial PHA to accept the late billing (such as where the receiving PHA does not have the funding to support the voucher and the family would be terminated if the initial PHA refused to accept the billing). The initial PHA may contact HUD to report the receiving PHA's failure to submit the bill in accordance with these procedures. HUD may take action to address the receiving PHA's failure to do so, which may include reducing the receiving PHA's administrative fee. Additionally, HUD may subsequently transfer units and funding from the receiving PHA to the initial PHA when it is feasible, since the initial PHA was required to accept the late billing.

### **Monthly Billing Payments [24 CFR 982.355(e), Notice 2004-12]**

If the receiving PHA is administering the family's voucher, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. When reimbursing for administrative fees, the initial PHA must promptly reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under contract on the first day of the month for which the receiving PHA is billing the initial PHA under portability. If the administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill [24 CFR 982.355(e)(2)].

The initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of over leasing or funding shortfalls. The PHA must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed



by receiving PHAs as well as for families that remain within its jurisdiction.

**MMPHA Policy**

The initial PHA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies the initial PHA that direct deposit is not acceptable to them. If the initial PHA extends the term of the voucher, the receiving PHA's voucher will expire 30 calendar days from the new expiration date of the initial PHA's voucher.

**Annual Updates of Form HUD-50058**

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family. The initial PHA must continue paying the receiving PHA based on the last form HUD-50058 received, unless instructed otherwise by HUD. The initial PHA may seek absorption of the vouchers by following steps outlined in Notice PIH 2016-09.

**Outside the Receiving PHA's Jurisdiction [Notice 2004-12]**

If the initial PHA is assisting a portable family under a billing arrangement and the family subsequently decides to move out of the receiving PHA's jurisdiction, the initial PHA is responsible for issuing the family a voucher while the family is either being assisted or has a voucher from the receiving PHA and, if the family wishes to port to another jurisdiction, sending form HUD-52665 and supporting documentation to the new receiving PHA. Any extensions of the initial PHA voucher necessary to allow the family additional search time to return to the initial PHA's jurisdiction or to move to another jurisdiction would be at the discretion of the initial PHA.

**Denial or Termination of Assistance [24 CFR 982.355(c)(17)]**

At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance with the family in accordance with 24 CFR 982.552 and 24 CFR 982.553.

**Receiving PHA Role**

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)].

The receiving PHA's procedures and preferences for selection among eligible applicants does not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit or voucher size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e) (2)].

### **Responding to Initial PHA's Request [24 CFR 982.355(c)]**

The receiving PHA must respond via e-mail or other confirmed delivery method to the initial PHA's inquiry to determine whether the family's voucher will be billed or absorbed [24 CFR 982.355(c)(3)]. If the receiving PHA informs the initial PHA that it will be absorbing the voucher, the receiving PHA cannot reverse its decision at a later date without consent of the initial PHA (24 CFR 982.355(c)(4)).

#### **MMPHA Policy**

The PHA will use e-mail, when possible, to notify the initial PHA whether it will administer or absorb the family's voucher.

### **Initial Contact with Family**

When a family moves into the PHA's jurisdiction under portability, the family is responsible for promptly contacting the PHA and complying with the PHA's procedures for incoming portable families [24 CFR 982.355 (c) (3)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA does not process the family's paperwork but instead refers the family back to the initial PHA [Notice PIH2004-12].

When a portable family request assistance from the receiving PHA, the receiving PHA must promptly inform the initial PHA whether the receiving PHA will bill the initial PHA for assistance on behalf of the portable family or will absorb the family into its own program [24 CFR 982.355(c)(5)]. If the PHA initially bills the initial PHA for the family's assistance, it may later decide to absorb the family into its own program [Notice PIH 2004-12].

If, for any reason, the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PID2004-12].

### **Briefing**

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search. [Notice PIH 2004-12].

#### **MMPHA Policy**

MMPHA will require the family to attend a briefing. The family will be provided with a briefing packet in an individual briefing.

MMPHA will inform the family about the PHA's payment standards and subsidy standards, procedures for requesting an approval of a unit, the unit inspection process, and the leasing process.

### **Income Eligibility and Reexamination**

HUD allows the receiving PHA to conduct its own income reexamination of a portable family.

[24 CFR 982.355(c) (4)] However, the receiving PHA may not delay voucher issuance or unit approval until the reexamination process is complete unless the reexamination is necessary to determine an applicant family is income eligible for admission to the program in the area where the family wishes to lease a unit [Notice PID-2004-12, 24 CFR 982.201(b) (4)]. The receiving PHA does not re-determine income eligibility for a portable family that was already receiving assistance in the initial PHA voucher program [24 CFR 982.355(c) (1)].

#### **MMPHA Policy**

For any family moving into its jurisdiction under portability, MMPHA will conduct a new reexamination of family's income and composition. MMPHA will not delay the issuance of the family's voucher for this reason. MMPHA will not delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and MMPHA cannot confirm the family is income eligible for admission to the program in the area where the unit is located.

MMPHA will rely upon any verification provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary.

#### **Voucher Issuance**

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(c)(13)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR 982.355(c)(15)].

#### **Timing of Voucher Issuance**

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2016-09].

#### **MMPHA Policy**

When a family ports into its jurisdiction, the PHA will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with the PHA's procedures. The PHA will update the family's information when verification has been completed.

#### **Voucher Term**

The term of the receiving PHA's voucher may not expire before the expiration date of the initial voucher [24 CFR 982.355 (c) (6)].

#### **MMPHA Policy**

The receiving PHA's voucher will expire on the same date as the initial PHA's voucher.

### **Voucher Extensions [24 CFR 982.355(c)(14), Notice 2016-09]**

Once the receiving PHA issues the portable family a voucher, the receiving PHA's policies on extensions of the voucher term apply. The receiving PHA must inform the initial PHA of any extension granted to the term of the voucher. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

#### **MMPHA Policy**

The PHA generally will not extend the term of the voucher that it issues to an incoming portable family unless the PHA plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth. The PHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities.

### **Voucher Suspensions [24 CFR 982.303, 24 CFR 982.355(c)(15)]**

If the family submits a request for tenancy approval during the term of the receiving PHA's voucher, the PHA must suspend the term of that voucher. The term of the voucher stops from the date that the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied [24 CFR 982.4(b)]

### **Notifying the Initial PHA**

The receiving PHA must promptly notify the initial PHA 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 receiving PHA's voucher [24 CFR 982.355(c)(16)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [Notice PIH 2016-09].

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction [Notice PIH 2016-09].

### **Administering a Portable Family's Voucher**

#### **Portability Billing [24 CFR 982.355(e)]**

To cover assistance for a portable family that was not absorbed, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. The amount of the housing assistance payment for a portable family in the receiving PHA's program is determined in the same manner as for other families in the receiving PHA's program.

The receiving PHA may bill the initial PHA for the lesser of 80 percent of the initial PHA's ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under contract on the first day of the month for which the receiving PHA

is billing the initial PHA under portability. If the administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill (i.e., the receiving PHA may bill for the lesser of 80 percent of the initial PHA's prorated ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee).

If both PHAs agree, the PHAs may negotiate a different amount of reimbursement.

#### **MMPHA Policy**

Unless the PHA negotiates a different amount of reimbursement with the initial PHA, the PHA will bill the initial PHA the maximum amount of administrative fees allowed, ensuring any administrative fee proration has been properly applied.

#### **Initial Billing Deadline**

If a portable family's search for a unit is successful and the receiving PHA intends to administer the family's voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) in time that the notice will be **received** no later than 90 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2016-09]. This deadline may be extended for 30 additional days if the delay is due to suspension of the voucher's term (see Initial Billing Section). A copy of the family's form HUD-50058, Family Report, completed by the receiving PHA must be attached to the initial billing notice. The receiving PHA may send these documents by mail, fax, or e-mail.

#### **MMPHA Policy**

The PHA will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline.

If the receiving PHA fails to send the initial billing by the deadline, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or

(b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is over leased) [Notice PIH 2016-09].

#### **Ongoing Notification Responsibilities [Notice 2004-12, HUD 52665]**

##### **Annual Reexaminations**

The receiving PHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

#### **MMPHA Policy**

MMPHA will send a copy of the updated HUD-50058 by fax, email regular or regular mail at the same time the PHA and owner are notified of the reexamination results.

#### **Change in Billing Amount**

The receiving PHA is to notify the initial PHA, using form HUD-52665, of any changes in the billing amount for a family as a result of.

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification. If the change resulted in a decrease in the monthly billing amount, the initial PHA will offset future monthly payments until the difference is reconciled.

#### **Late Payments [Notice PIH 2016-09]**

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The receiving PHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification, the receiving PHA may request by memorandum to the director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. The receiving PHA must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

#### **Overpayments [Notice PIH 2004-12]**

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA..

In the event HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA the billing arrangement was terminated, the receiving PHA must take the following steps:

Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.

Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2004-12.

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

At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(17)].

In the case of a termination, the PHA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the receiving PHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement [HUD-52665; Notice PIH 2016-09].

#### **MMPHA Policy**

If the PHA elects to deny or terminate assistance for a portable family, the PHA will notify the initial PHA within 10 business days of the informal review or hearing if the denial or termination is upheld. The PHA will base its denial or termination decision of the policies set forth in the sections on eligibility and termination of assistance and tenancy. The receiving PHA will furnish the initial PHA with a copy of the review or hearing decision.

### **Absorbing a Portable Family**

The receiving PHA may absorb an incoming portable family into its own program when the PHA executes a HAP contract on behalf of the family or at any time thereafter providing that the PHA has funding available under its annual contributions contract (ACC) [24 CFR 982.355(d)(1), Notice PIH 2016-09].

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR 982.201(b)(2)(vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, the receiving PHA must send an updated form HUD-52665 to the initial PHA no later than 10 business days following the effective date of the termination of the billing arrangement [Notice PIH 2016-09].

#### **MMPHA Policy**

If MMPHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, MMPHA will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption. If MMPHA decides to absorb a family at a later time, it will provide the initial PHA within 30 day's advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA's voucher program

[24 CFR 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability [24 CFR 982.355(e)(4)].

### **Unit Size**

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS/NSPIRE space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family.

### **Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]**

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises.

### **Rent Burden [24 CFR 982.508]**

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the family share cannot exceed 40 percent of the family's adjusted monthly income. The term "family share" refers to the amount the family pays toward rent and utilities. The gross rent for the unit minus the total housing assistance payment (HAP) for the unit equals the family share.

### **Lease and Tenancy Addendum**

The family and the owner must execute and enter into a written dwelling lease for the assisted unit. This written lease is a contract between the tenant family and the owner; the PHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. "Legal capacity" means the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308 (a)]

### **Lease Form and Tenancy Addendum [24 CFR 982.308]**

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that, if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

All provisions in the HUD-required Tenancy Addendum must also be, word-for-word, in the owners' standard lease for use with the assisted family. The Tenancy Addendum includes the tenancy requirements for the program and the composition of the household as approved by the PHA. As a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum



against the owner and the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

**MMPHA Policy:**

MMPHA does not provide a model or standard dwelling lease for owners to use the HCV program.

**Lease Information [24 CFR 982.308 (d)]**

The assisted dwelling lease must contain all of the required information as listed below.

- The names of the owners and tenants:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit.
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to the owner.
- A specification of what utilities and appliances are supplied by the owner, and what utilities and appliances are supplied by the family.

**Term of the Assisted Tenancy**

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309].

The initial lease term is also stated in the HAP contract.

The HUD program regulations permit the PHA to approve a shorter initial lease term if certain conditions are met.

**MMPHA Policy**

MMPHA may not approve an initial lease term of less than one (1) year.

During the initial year of the lease, the owner may not raise the rent to tenant [24 CFR 982.309]. Any provisions for renewal of the dwelling lease will be stated in the dwelling lease. There are no HUD requirements regarding any renewal extension terms, except that they must be in the dwelling lease if they exist. The PHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated annual contributions contract. [24 CFR 982.309 (b)].

**Security Deposit [24 CFR 982.313 (a) and (b)]**

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practices, or in excess of amounts charged by the owner to unassisted tenants. However, if the PHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52642].

### **MMPHA Policy**

MMPHA will allow the owner to collect any security deposit amount the owner determines is appropriate. Therefore, no modification to the HAP contract will be necessary.

### **Separate Non-Lease Agreements between Owner and Tenant**

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner as approved by the PHA minus the PHA's housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

### **MMPHA Policy**

The PHA permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.

Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

### **PHA Review of Lease**

The PHA will review the dwelling lease for compliance with all applicable requirements. The PHA is permitted, but not required, to review the lease to determine if the lease complies with State and local law and it is permitted to decline to approve the tenancy if the PHA determines that the lease does not comply with State or local law [24 CFR 982.308 (c)]

### **MMPHA Policy**

If the dwelling lease is incomplete or incorrect, the PHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will be accepted in-person and electronically. The PHA will not accept missing and corrected information over the phone

Because the initial leasing process is time-sensitive, the PHA will attempt to communicate with the owner and family by phone, fax, or email. The PHA will use mail when the parties cannot be reached by phone, fax, or email.

The PHA will not review the owner's lease for compliance with state/local law.

### **Tenancy Approval [24 CFR 982.305]**

After receiving the family's request for Tenancy Approval, with the proposed dwelling lease, the PHA must promptly notify the family and the owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, the PHA must ensure all required actions and determinations have been completed.

These actions include ensuring the unit is eligible; the unit has been inspected by the PHA and meets Housing Quality Standards (HQS/NSPIRE); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent charged by the owner for the unit is reasonable; that, where the family is initially leasing a unit the gross rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the PHA, with no conflicts of interest [24 CFR 982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305 (b)] and Violence Against Women Act statement.

### **HAP Contract Execution [24 CFR 982.305]**

The HAP contract is a written agreement between the PHA, and the owner of the dwelling unit occupied by a housing choice voucher assisted family. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit and obliges the owner to comply with all program requirements. The HAP contract format is prescribed by HUD.

If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451 (a) (2)]. The PHA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The PHA must make a best effort to ensure the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

The PHA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 days from the beginning of the lease term, the PHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60-day period is void, and the PHA may not pay any housing assistance payment to the owner.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the PHA. The owner will ensure that both the PHA and the assisted family received copies of the same dwelling lease.

The owner and the PHA will execute the HAP contract. The PHA will not execute the HAP contract until the owner has submitted IRS form W-9.

#### **MMPHA Policy**

In addition to the required submission of IRS form W-9, MMPHA requests landlords participate in direct deposit. If the landlord participates in direct deposit, the PHA will not execute the HAP contract until the direct deposit forms have been received.

#### **Changes in Lease or Rent [24 CFR 982.308]**

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes must remain in accordance with the requirements.

Generally, PHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, voucher assistance in the unit shall not continue unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner. These circumstances include:

- Changes in lease requirements governing tenants or owner responsibilities for utilities or appliances
- Changes in lease provisions governing the term of the lease
- The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RFTA) along with a new dwelling lease containing the altered terms which must be approved.

Where the owner is changing the amount of rent, the owner must notify the PHA and the tenant of any changes in the amount of rent to owner at least 60 days before any such changes go into effect [24 CFR 308(g) (4)]. The PHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or give the family notice in accordance with the terms of the lease. No rent increase is permitted during the initial term of the lease [24 CFR 982.309 (a) (3)].

### **Moving with Continued Assistance and Portability**

HUD regulations impose few restrictions on where families may live or move with HCV assistance. HUD sets forth regulations and PHA policies governing moves within or outside the PHA's jurisdiction in two parts:

Moving with Continued Assistance: This covers the general rules that apply to all moves by a family assisted under the PHA's HCV program, whether the family moves to another unit within the PHA's jurisdiction or to a unit outside the PHA's jurisdiction

Portability: This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into the PHA's jurisdiction. This part also covers the special responsibilities the PHA has under portability regulations and procedures.

### **Allowable Moves**

HUD lists six regulatory conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.354(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the PHA a copy of the notice at the same time [24 CFR 982.354(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.354(b)(1)(ii)].

#### **MMPHA Policy**

If the family and the owner mutually agree to terminate the lease for the family's unit, the family must give the PHA a copy of the termination agreement.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.354(b)(2)]. The family must give the PHA a copy of any owner eviction notice [24 CFR 982.551(g)].
- 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 [24 CFR 982.354(b)(4)]. This condition applies even when the family has moved out of its unit in violation of the lease, with or without prior notification to the PHA, if the family or family member who is the victim reasonably believed that he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.354(b)(4), 24 CFR 982.353(b)]. The PHA must adopt an emergency transfer plan as required by regulations at 24 CFR 5.2007(e).

### **MMPHA Policy**

If a family requests permission to move with continued assistance or for an external transfer to another covered housing program operated by the PHA based on a claim that the move is necessary 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, the PHA will request that the resident request the emergency transfer using form HUD-5383, and the PHA will request documentation.

The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the family or family member will suffice. In such cases the PHA will document the waiver in the family's file.

The PHA may choose to provide a voucher to facilitate an emergency transfer of the victim without first terminating the assistance of the perpetrator.

Before granting an emergency transfer, the PHA will ensure the victim is eligible to receive continued assistance based on the citizenship or immigration status of the victim.

The PHA has adopted an emergency transfer plan, which is included as Exhibit 16-3 to this plan and discusses external transfers to other covered housing programs.

- The PHA has terminated the HAP contract for the family's unit for the owner's breach [24CFR 982.354(b)(1)(i)].
- The PHA determines that the family's current unit does not meet the HQS/NSPIRE space standards because of an increase in family size or a change in family composition. In such cases, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the PHA must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives notice to the owner. [24 CFR 982.403(a) and (c)]

### **Restrictions on Moves**

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which a PHA may deny a family permission to move and two ways in which a PHA may restrict moves by a family.

### **Denial of Moves**

HUD regulations permit the PHA to deny a family permission to move under the following conditions:

### **Insufficient Funding**

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

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

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

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

For portability moves, a "higher cost area" is defined as an area where a higher subsidy amount will be paid for a family because of higher payment standard amounts or "more generous" subsidy standards (e.g., the receiving PHA issues a 3-bedroom voucher to a family that receives a 2-bedroom voucher from the initial PHA). Before denying the family's request to move due to insufficient funding, the initial PHA must contact the receiving PHA and confirm whether the receiving PHA will administer or absorb the family's voucher. The receiving PHA cannot reverse its commitment to absorb the voucher.

If the receiving PHA is willing to absorb the family, there are no grounds to deny portability moves under 24 CFR 982.314 (e) (1). The initial PHA may also take into consideration any

reported changes in the family's income or composition that may result in a decreased subsidy amount therefore not resulting in an increase cost to the initial PHA.

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

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

**MMPHA Policy**

MMPHA may deny a family a move to a higher cost area based upon insufficient funding, once it has notified the local HUD office and demonstrated there are insufficient funds projected to meet the current calendar year expenses. Once sufficient funds are available the family will be notified and provided the opportunity to move prior to the issuance of any vouchers for families on the waiting list.

**Grounds for Denial or Termination of Assistance**

The PHA may deny a family permission to move if it has grounds for denying or terminating the family's assistance [24 CFR 982.354(e)(2)].

**MMPHA Policy**

If the PHA has grounds for denying or terminating a family's assistance, the PHA will act on those grounds in accordance with the regulations and policies set forth. In general, it will not deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances.

**Restrictions on Elective Moves [24 CFR 982.354(c)]**

HUD regulations permit the PHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit the PHA to prohibit more than one elective move by a participant family during any 12-month period. However, such prohibitions, if adopted, do 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. In addition, the PHA may not establish a policy permitting moves only at reexamination [Notice PIH 2016-09].

**MMPHA Policy**

The PHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the PHA's jurisdiction or outside it under portability.



The PHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the PHA's jurisdiction.

The PHA will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control.

In addition, the PHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities.

## **Moving Process**

### **Notification**

If a family wishes to move to a new unit, the family must first notify the PHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.314 (d) (2)]. If the family wishes to move to a unit outside the PHA's jurisdiction under portability, the notice to the PHA must specify the area the family wishes to move [23 CFR 982.314(d) (2), Notice PIH 2004-12]. The notices must be in writing [24 CFR 982.5].

### **MMPHA Policy**

A family currently under program assistance must give the owner a 30-day written notice of intent to move from the unit. They must provide the PHA an exact copy of the notice given to the owner. MMPHA will prohibit more than one elective move by a participant family during any 12-month period.

## **Chapter 11 – REEXAMINATIONS**

### **Reexaminations**

The PHA is required to reexamine each family's income and composition at least annually, and to adjust the family's level of assistance accordingly. Interim reexaminations are also needed in certain situations. Following are the requirements for annual and interim reexaminations as well as the recalculation of the family's share of the rent and subsidy amount occurring as a result as said reexamination:

**Annual Reexaminations:** Discusses the process for conduction annual reexaminations.

**Interim Reexaminations:** Discusses the requirements for families to report changes in family income and composition between annual reexaminations.

**Recalculating Family Share and Subsidy Amount:** Discusses the recalculation of family share and subsidy amount based on the results of annual and interim reexaminations.

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

### **Annual Reexaminations**

The PHA must conduct a reexamination of the family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated

### **Scheduling Annual Reexaminations**

#### **MMPHA Policy**

The PHA must establish a policy to ensure that the annual reexamination for each family is completed within a 12-month period and may require reexamination more frequently. The PHA will begin the annual reexamination process 90 days in advance of its scheduled effective dates to coincide with the family's anniversary date.

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

If the family moves to a new unit, the PHA will perform a new annual reexamination.

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

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

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

#### **MMPHA Policy**

MMPHA will conduct re-examinations through a fax, email, or mail-in process.

Notification of annual reexamination will be sent to the family, included in the notice is the recertification form and listing of all documentation that is to be returned for review, and the deadline for returning the information. If the head of household does not respond to the reexamination notification, a second notice will be sent to them. If the family fails to return after the second notification, then they family would be sent a notice of termination. An advocate or interpreter may assist the family in the recertification process. The family and the PHA must execute a certification attesting to the role and assistance of any third party.

### **Conducting Annual Reexaminations**

As part of the annual reexamination process, families are required to provide updated information to the PHA regarding the family's income, expenses, and composition [24 CFR 982.552(b)].

### **MMPHA Policy**

Families will be asked to submit all required information as described in the reexamination notice. This is documentation related to the family's income, expenses, and family composition. If the family does not mail in all the required documentation, they will be sent a second notice to complete the paperwork. If the family does not provide the required documents or information within the required time frame, the family will be sent a notice of termination.

In addition to the required information, the family is required to complete a re-certification form and sign documents allowing the agency to conduct criminal background checks.

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

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

If adding a new family member to the unit causes overcrowding according to Housing Quality Standards (HQS/NSPIRE), the PHA may issue the family a new voucher, and the family and the PHA must try to find a new acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

### **Determining Ongoing Eligibility of Certain Students [24 CFR 982.552(b)(5)]**

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

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

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

### **MMPHA Policy**

During the annual reexamination process, the PHA will determine the ongoing eligibility of each student who is subject to the eligibility restriction in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents based on the policy, the parent's income will not be reviewed.

If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated.

If the student continues to be income eligible on his/her own income and the income of his/her parents (if applicable), the PHA will process a reexamination in accordance with the policies in this section.

### **Effective Dates**

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

### **MMPHA Policy**

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

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

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

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

If the family causes a delay in processing the annual reexamination, increases in the family share of the rent will be applied retroactively to the scheduled effective date of the annual reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies.

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

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

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

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

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

### **Interim Reexaminations [24 CFR 982.526]**

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

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

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

#### **MMPHA Policy**

Due to HOTMA revisions interim recertifications at tenant's request for any decrease in adjusted income exceeding 10 percent (and for smaller drops if HUD establishes or permits the PHA or owner to establish a threshold below 10 percent) and required for an annual increase exceeding 10 percent (or a different threshold if HUD establishes one), except that no interim rent increases based on earnings are permitted unless the family has received an interim reduction during the year. A PHA or owner may choose not to conduct an interim recertification for an increase in income that occurs in the last 3 months of a certification period.

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

The addition of a family member as a result of birth, adoption, or court award custody does not require PHA approval. However, the family is required to promptly notify the PHA of the addition [24 CFR 982.552(h) (2)].

#### **MMPHA Policy**

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

### **New Family and Household Members Requiring Approval**

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

When any new family member is added, the PHA must make appropriate adjustments in the family share of the rent and the HAP payment at the effective date of either the annual or interim reexamination [24 CFR 982.516(e)(2)].

If a change in family size causes a violation of Housing Quality Standards (HQS/NSPIRE) space standards (see Chapter 8), the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the family's HAP contract in accordance with its terms [24 CFR 982.403].

### **MMPHA Policy**

Families must request PHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 21 consecutive days within a twelve-month period and would no longer qualify as a "guest". Requests must be made in writing and approval by the PHA prior to the individual moving into the unit.

The PHA will not approve the addition of a new family or household member unless the individual meets the PHA's eligibility criteria.

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

If the PHA determines an individual meets the PHA's eligibility criteria, the PHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS/NSPIRE standards, the approval letter will explain that the family will be issued a moving voucher and will be required to move.

If the PHA determines an individual does not meet the PHA's eligibility criteria, the PHA will notify the family in writing of its decision to deny approval of the new family or household member and the reason for the denial. The PHA will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

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

Families must promptly notify the PHA if any family member no longer lives in the unit [24 CFR 982.551 (h) (3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], the PHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

### **MMPHA Policy**

If a household member ceases to reside in the unit, the family must inform the PHA within 10 business days. This requirement also applies to a family member who has been temporarily absent at the point the family concludes the individual is permanently absent. If a live-in aide, foster child, or foster adult cease to reside in the unit, the family must inform the PHA within 10 business days.

### **Changes Affecting Income or Expenses**

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

### **PHA-Initiated Interim Reexaminations**

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

#### **MMPHA Policy**

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

If the family has reported zero income, the PHA will conduct an interim reexamination every three months as long as the family continues to report they have no income.

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

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

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

### **Required Reporting**

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

#### **MMPHA Policy**

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

### **Optional Reporting**

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

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

#### **MMPHA Policy**

If a family reports a change that would result in an increase in the family share of rent, the PHA will conduct an interim reexamination.

If a family reports a change that would result in a decrease in the family share of rent, the PHA will conduct an interim reexamination.

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

## **Processing the Interim Reexamination**

### **Method of Reporting**

#### **MMPHA Policy**

The family must notify the PHA of changes in writing. If the family provides oral notice, the PHA will also require the family to submit the changes in writing.

MMPHA will send the family the required documentation which must be completed and returned to the office within 10 business days.

This time frame may be extended for good cause with PHA approval.

### **Effective Dates**

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

#### **MMPHA Policy**

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

The increase generally will be effective on the first day of the month following 30 days' notice to the family.

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

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

The decrease will be effective on the first day of the month following the month in which the change was reported, and all required documentation was submitted.

### **Recalculating Family Share and Subsidy Amount**

After gathering and verifying required information for an annual or interim reexamination, the PHA must recalculate the family share of the rent and the subsidy amount and notify the family and the owner of the changes [24 CFR 982.516(d)(2)]. While the basic policies that govern these calculations are provided in the income and subsidy section this part lays out policies that affect these calculations during a reexamination.



## **Changes in Payment Standards and Utility Allowances**

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

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

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

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5].

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

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

The 90 to 110 percent of FMR discretionary range for area payment standards remains unchanged, but PHAs can increase the payment standard to 120 percent of the FMR without having to seek HUD approval as a reasonable accommodation for a person with a disability. (Section 102(d), amending section 8(o)(1)(D) of the U.S.H.A.)

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

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

### **Utility Allowances [24 CFR 982. 517(d)]**

The family share of the rent and the HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in the PHA's utility allowance schedule.

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

At reexamination, the PHA must use the PHA current utility allowance schedule [24 CFR 982.517(d) 92)].

#### **MMPHA Policy**

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

### **Notification of New Family Share and HAP Amount**

The PHA must notify the owner and family of any changes in the amount of the HAP payment. [HUD-52641, HAP contract] The notice must include the following information:

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

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

### **Discrepancies**

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

## **Chapter 12 – TERMINATION OF ASSISTANCE AND TENANCY**

HUD regulations specify the reasons for which a PHA can terminate a family's assistance and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This section presents the policies that govern voluntary and involuntary terminations of assistance and termination of the tenancy by the owner.

Grounds for Termination of Assistance: Explains the various reasons a family's assistance may be terminated, including voluntary termination by the family, termination because the family no longer qualifies to receive subsidy, and termination by the PHA based on the family's behavior.

Approach to Termination of Assistance: Specifies policies that govern when an involuntary termination takes place, the alternatives the PHA may consider in lieu of termination, the criteria

the PHA must use when deciding what action to take, and the steps the PHA must take when terminating a family's assistance.

Termination of Tenancy by the Owner: Presents the policies that govern the owner's right to terminate an assisted tenant.

### **Termination of Assistance**

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

### **Family No Longer Requires Assistance [24 CFR 982.455]**

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

#### **MMPHA Policy**

If a participating family receiving zero assistance which will place them on the graduation program, experiences a change in circumstances that would cause the HAP payments to rise above zero, the family must notify the PHA of the change of circumstances and request an interim reexamination before the expiration of the 180-day period.

### **Family Chooses to Terminate Assistance**

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

#### **MMPHA Policy**

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

### **Mandatory Termination of Assistance**

HUD requires the PHA to terminate assistance in the following circumstances:

### **Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)]**

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

#### **MMPHA Policy**

A family will be considered evicted if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary. If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not

mandatory. However, the PHA will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described.

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

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

The PHA must terminate assistance if any family member fails to sign and submit any consent form, they are required to sign for a reexamination.

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

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

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

**Failure to Disclose and Document Social Security Numbers [24 CFR 5.218(c), Notice PIH 2012-10]**

The PHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the PHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the PHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the PHA determined the family to be noncompliant.

**MMPHA Policy**

The PHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

<b>EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS FOR NONCITIZENS [HCV GB, pp. 5-9 and 5-10]</b>	
<ul style="list-style-type: none"> <li>• <b>All</b> noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.</li> <li>• Except for persons 62 or older, all noncitizens must sign a verification consent form</li> <li>• Additional documents are required based upon the person's status.</li> </ul>	
<p><b>Elderly Noncitizens</b> • A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.</p>	
<p><b>All other Noncitizens</b> • Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.</p>	
<ul style="list-style-type: none"> <li>• Form I-551 Alien Registration Receipt Card (for permanent resident aliens)</li> <li>• Form I-94 Arrival-Departure Record annotated with one of the following:               <ul style="list-style-type: none"> <li>• “Admitted as a Refugee Pursuant to Section 207”</li> <li>• “Section 208” or “Asylum”</li> <li>• “Section 243(h)” or “Deportation stayed by Attorney General”</li> <li>• “Paroled Pursuant to Section 221 (d)(5) of the USCIS”</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Form I-94 Arrival-Departure Record with no annotation accompanied by:               <ul style="list-style-type: none"> <li>• A final court decision granting asylum (but only if no appeal is taken);</li> <li>• A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);</li> <li>• A court decision granting withholding of deportation; or</li> <li>• A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.</li> </ul>	<ul style="list-style-type: none"> <li>Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.</li> </ul>
<ul style="list-style-type: none"> <li>• A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or</li> <li>• Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the <i>Federal Register</i></li> </ul>	

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

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

**Lifetime Registered Sex Offenders [Notice PIH 2012-28]**

Should a PHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the PHA must immediately terminate assistance for the household member.

In this situation, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must terminate assistance for the household.

**Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR 982.552(b)(5) and FR 4/10/06]**

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, is not residing with his/her parents in an HCV assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the PHA must terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and PHA policies or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

### **Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-9]**

The PHA must immediately terminate program assistance for deceased single member households.

### **Mandatory Policies and Other Authorized Terminations**

#### **Mandatory Policies [24 CFR 982.553(b) and 982.551(1)]**

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

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
- Any household member has violated the family's obligation not to engage in drug related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity.

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

#### **MMPHA Policy**

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

"Currently engaged in" is defined as any use of illegal drugs during the previous six months. The PHA will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol. In making its decision to terminate assistance the PHA will consider alternatives and factors the PHA may on a case-by-case basis choose not to terminate assistance.

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

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

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

Violent criminal activity means any criminal activity that has 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.

#### **MMPHA Policy**

The PHA will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

In making its decision to terminate assistance, the PHA will consider alternatives and factors, the PHA may, on a case-by-case basis choose not to terminate assistance.

### **Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c), 24 CFR 5.2005(c)]**

HUD permits the PHA to terminate assistance under a number of other circumstances. It is left to the discretion of the PHA whether such circumstances in general warrant consideration for the termination of assistance. The Violence against Women Act of 2013 explicitly prohibits PHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, sexual assault, or stalking as reasons for terminating the assistance of a victim of such abuse.

Additionally, per the alternative requirements listed in the Federal Register notice dated December 29, 2014, PHAs are no longer permitted to terminate assistance to a family due to the family's failure to meet its obligations under the Family Self-Sufficiency (FSS) contract of participation [FR Notice 12/29/14].

#### **MMPHA Policy**

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

- The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related PHA policies.
- Any family member has been evicted from federally assisted housing in the last five years.
- Any PHA has ever terminated assistance under the program for any member of the family.
- Any family member has committed fraud, bribery, or any other

corrupt or criminal act in connection with any federal housing program.

- The family currently owes rent or other amounts to any PHA in connection with Section 8 or public housing assistance under the 1937 Act.
- The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
- The family has breached the terms of a repayment agreement entered into with the PHA.

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

- Abusive or violent behavior towards PHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.
- Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate assistance, the PHA will consider alternatives and factors; the PHA may, on a case-by-case basis, choose not to terminate assistance.

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

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

#### **MMPHA Policy**

If the family is absent from the unit for more than 60 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with policy. A hardship appeal may be presented in writing by the family (or his/her representative). The appeal may be approved by either the Executive Director and/or the informal hearing panel.

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

The PHA may terminate HAP contracts 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.



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

If the PHA must terminate HAP contracts due to insufficient funding, the PHA will do so after careful monitoring and exploration of other possible alternatives; including, but not limited to, consultation with tenancy advisory groups, other PHA's, industry organizations and associations, and HUD field office staff.

#### **MMPHA Policy**

MMPHA will determine whether there is sufficient funding to pay for the currently assisted contracts and will determine if any other action can be taken to reduce program costs. If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants and after consultation with HUD, the PHA will terminate HAP contracts as a last resort. The termination process is as follows:

MMPHA will assess the demographic makeup of the participant families and the approximate number of terminations required to maintain sufficient funding.

First priority for remaining on the program will be those families whose head or co head are elderly or disabled. Second priority for remaining on the program is households who have children under the age of 5.

A lottery system will be utilized to determine which remaining households will be terminated. Owners and tenants will be provided with a 30-day notice of the termination of the assistance. Once a family has been terminated under this process, their names will be placed at the top of the waitlist in the order in which their lottery number was pulled. The agency will not absorb any ports until those who have been terminated under this process have been reinstated on the program.

#### **Approach to Termination of Assistance**

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

#### **Method of Termination [24 CFR 982.552 (a) (3)]**

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

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

- Refusing to process a request for or to provide assistance under portability procedures.

## **Alternatives to Termination of Assistance**

### **Changes in Household Composition**

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

#### **MMPHA Policy**

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

### **Repayment of Family Debts**

#### **MMPHA Policy**

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

### **Criteria for Deciding to Terminate Assistance Evidence**

For criminal activity, HUD permits the PHA to terminate assistance if a preponderance of the evidence indicates a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.552(c)].

#### **MMPHA Policy**

The PHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions. Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but the greater weight of all evidence.

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

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

#### **MMPHA Policy**

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

- The seriousness of the case, especially with respect to how it would affect other residents' safety or property

- The effects that termination of assistance may have on other members of the family who was not involved in the action or failure to act
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, a victim of domestic violence, dating violence, sexual assault, or stalking
- The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future While a record of arrest(s) will not be used as the basis for termination, an arrest may, however, trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity. As part of its investigation, the PHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PHA may also consider:
  - Any statements made by witnesses, or the participant not included in the police report
  - Whether criminal charges were filed
  - Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal
  - Any other evidence relevant to determining whether or not the participant engaged in disqualifying activity
  - Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property
  - In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully
  - The PHA will 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.
  - In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family

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

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

**MMPHA Policy**

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

## **Terminations Related to Domestic Violence, Dating Violence, Sexual Assault or Stalking**

This section describes the protections against termination of assistance that the Violence against Women Act of 2013 (VAWA) provides for victims of domestic violence, dating violence, sexual assault, and stalking. For general VAWA requirements, key VAWA definitions, and PHA policies pertaining to notification, documentation, and confidentiality.

### **VAWA Protections against Termination**

VAWA provides four specific protections against termination of HCV assistance for victims of domestic violence, dating violence, sexual assault, or stalking. (Note: The second, third, and fourth protections also apply to terminations of tenancy or occupancy by owners participating in the HCV program, as do the limitations discussed under the next heading.)

First, VAWA provides that a PHA may not terminate assistance to a family that moves out of an assisted unit in violation of the lease, with or without prior notification to the PHA, if the move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.354(b)(4)].

Second, it provides that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking may not be construed either as a serious or repeated lease violation by the victim or as good cause to terminate the assistance of the victim [24 CFR 5.2005(c)(1)].

Third, it provides that criminal activity directly related to domestic violence, dating violence, sexual assault or stalking may not be construed as cause for terminating the assistance of a tenant if a member of the tenant's household, a guest, or another person under the tenant's control is the one engaging in the criminal activity and the tenant or affiliated individual or other individual is the actual or threatened victim of the domestic violence, dating violence, or stalking [24 CFR 5.2005(c)(2)].

Fourth, it gives PHAs the authority to terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others without terminating assistance to, or otherwise penalizing, the victim of the violence [24 CFR 5.2009(a)].

### **Limitations on VAWA Protections [24 CFR 5.2005(d) and (e)]**

VAWA does not limit the authority of a PHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, sexual assault or stalking so long as the PHA does not subject the victim to a more demanding standard than it applies to other program participants [24 CFR 5.2005(d)(1)].

Likewise, VAWA does not limit the authority of a PHA to terminate the assistance of a victim of domestic violence, dating violence, sexual assault or stalking if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the assisted property if the victim is not terminated from assistance [24 CFR 5.2005(d)(2)].

HUD regulations define actual and imminent threat to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In

determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

In order to demonstrate an actual and imminent threat, the PHA must have objective evidence of words, gestures, actions, or other indicators. Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005(d)(3)].

### **MMPHA Policy**

In determining whether a program participant who is a victim of domestic violence, dating violence, sexual assault or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PHA will consider the following, and any other relevant, factors:

- Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, or stalking
- Whether the threat is a physical danger beyond a speculative threat
- Whether the threat is likely to happen within an immediate time frame
- Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat
- If the participant wishes to contest the PHA's determination that he or she is an actual and imminent threat to other tenants or employees, the participant may do so as part of the informal hearing.

### **Documentation of Abuse [24 CFR 5.2007]**

#### **MMPHA Policy**

When a tenant family is facing lease termination because of the actions of a tenant, household member, guest or other person under the tenant's control and a tenant or immediate family member of the tenant's family claims that she or he is the victim of such actions and that the actions are related to domestic violence, dating violence, sexual assault or stalking, MMPHA will require the individual to submit documentation affirming that claim. Documentation must include two elements:

- A signed statement by the victim that provides the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking.

One of the following:

- A police or court record documenting the actual or threatened abuse.
- A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

The required certification, HUD form 5382, Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking, and Alternate Documentation, and supporting documentation must be submitted to MMPHA within 14 business days after the individual claiming victim status receives a request for such certification.

In extreme circumstances when MMPHA can demonstrate an actual and imminent threat to other participants or employees of MMPHA/Central Missouri Community Action if the participant's (including the victim's) tenancy is not terminated, MMPHA will bypass the standard process and proceed with the immediate termination of the family's assistance.

### **Terminating the Assistance of a Domestic Violence Perpetrator**

Although VAWA provides protection against termination of assistance for victims of domestic violence, it does not provide such protection for perpetrators. VAWA gives the PHA the explicit authority to "terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others" without terminating assistance to "or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant" [24 CFR 5.2009(a)]. This authority is not dependent on a bifurcated lease or other eviction action by an owner against an individual family member. Further, this authority supersedes any local, state, or other federal law to the contrary. However, if the PHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance. This means that the PHA must follow the same rules when terminating assistance to an individual as it would when terminating the assistance of an entire family [3/16/07 Federal Register notice on the applicability of VAWA to HUD programs].

If the perpetrator remains in the unit, the PHA continues to pay the owner until the PHA terminates the perpetrator from the program. The PHA must not stop paying HAP until 30 days after the owner bifurcates the lease to evict the perpetrator. The PHA may pay HAP for the full month if the 30-day period will end mid-month [Notice PIH 2017-08].

If the perpetrator is the only participant eligible to receive assistance, the PHA will provide any remaining participant a chance to establish eligibility for the program. If the remaining participant cannot do so, the PHA will provide them with 30 days to establish eligibility for another housing program prior to termination of the HAP contract.

#### **MMPHA Policy**

When the actions of a tenant or other family member results in a determination by MMPHA to terminate the family's lease and another family member claims the actions involve criminal acts of physical violence against family members or others, MMPHA will request the victim submit the above required certification and supporting

documentation in accordance with the stated time frame. If the certification and supporting documentation are submitted within the required time, or any approved extension period, MMPHA will bifurcate the lease and evict or terminate the occupancy rights of the perpetrator. If the victim does not provide the certification and supporting documentation as required, MMPHA will proceed with termination of the family's lease. If MMPHA can demonstrate an actual and imminent threat to other tenants or those employed by MMPHA/Central Missouri Community Action if the tenant's tenancy is not terminated, MMPHA will bypass the standard process and proceed with the immediate termination of the tenant and/or perpetrator.

### **PHA Confidentiality Requirements**

All information provided to MMPHA regarding domestic violence, dating violence, sexual assault or stalking, including the fact an individual is a victim of such violence or stalking, must be retained in confidence and may not be entered into any shared data base nor provided to any related entity, except to the extent the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

### **Termination Notice**

HUD regulations require PHAs to provide written notice of termination of assistance to a family only when the family is entitled to an informal hearing. However, since the family's HAP contract and lease will also terminate when the family's assistance terminates [form HUD-52641], it is a good business practice to provide written notification to both owner and family anytime assistance will be terminated, whether voluntarily or involuntarily.

#### **MMPHA Policy**

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

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

### **Termination of Tenancy by The Owner**

Termination of an assisted tenancy is a matter between the owner and the family; the PHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy. Termination of tenancy for certain reasons will also result in termination of assistance.

## **Grounds for Owner Termination of Tenancy [24 CFR 982.310, 24 CFR 5.2005(c), and Form HUD-52641-A, Tenancy Addendum]**

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

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

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking and the victim is protected from eviction by the Violence against Women Act of 2013 (see section 12-II.E). A serious lease violation includes failure to pay rent or other amounts due under the lease. However, the PHA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

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

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

### **Criminal Activity or Alcohol Abuse**

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

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

However, in the case of criminal activity directly related to domestic violence, dating violence, sexual assault or stalking, if the tenant or an affiliated individual is the victim, the criminal activity may not be construed as cause for terminating the victim's tenancy.

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

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



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

### **Evidence of Criminal Activity**

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. This is the case except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, sexual assault, or stalking, and the tenant or an affiliated individual is the victim or threatened victim of the domestic violence, dating violence, sexual assault, or stalking.

### **Other Good Cause**

During the initial lease term, the owner may not terminate the tenancy for “other good cause” unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

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

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

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

### **Eviction [24 CFR 982.310 (e) and (f) and Form HUD-52641-A, Tenancy Addendum]**

The owner must give the tenant a written notice that specifies the grounds for termination of the tenancy during the term of the leases. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before the commencement of the eviction action. The notice of grounds may be included in, or may be combined with, any owner eviction notices to the tenant.

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

### **MMPHA Policy**

The owner must provide MMPHA with documentation related to filing eviction with the courts, including notice of the eviction date, and any final court judgments, as soon as possible, but no later than 5 calendar days following the court-ordered eviction.

The owner must give the PHA a copy of any eviction notices at the same time the owner notifies the family. The family is also required to give the PHA a copy of any eviction notice.

### **Deciding Whether to Terminate Tenancy [24 CFR 982.310(h), 24 CFR 982.310(h)(4)]**

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

- The nature of the offending action
- The seriousness of the offending action.
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy.
- The extent of participation by the leaseholder in the offending action.
- The effect of termination of tenancy on household members not involved in the offending activity.
- The demand for assisted housing by families who will adhere to lease responsibilities.
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action.
- The effect of the owner's action on the integrity of the program.

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

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

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

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, sexual assault or stalking is limited by the Violence against Women Act of 2013 (VAWA) and the conforming regulations in 24 CFR Part 5, Subpart L.

## **Effect of Tenancy Termination on The Family's Assistance**

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

## **Statement of Family Obligations**

Following is a listing of a participant family's obligations under the HCV program:

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

### **MMPHA Policy**

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

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

### **MMPHA Policy**

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

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, living or housekeeping habits that cause damage to the unit or premises, and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault or stalking will not be construed as serious or repeated lease violations by the victim [24 CFR 5.2005(c)(1)].

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

### **MMPHA Policy**

- The family must comply with lease requirements regarding written notice to the owner.

- The family must provide written notice to the PHA at the same time the owner is notified.
- The family must promptly give the PHA a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
- The composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly notify the PHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.

**MMPHA Policy**

- The request to add a family member must be submitted in writing and approved by both PHA and landlord prior to the person moving into the unit. The PHA will determine eligibility of the new member in accordance with our policies.
- The family must promptly notify the PHA in writing if any family member no longer lives in the unit.
- If the PHA has given approval, a foster child or a live-in aide may reside in the unit. The PHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when PHA consent may be given or denied.
- The family must not sublease the unit, assign the lease, or transfer the unit.
- Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.
- The family must supply any information requested by the PHA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify the PHA when the family is absent from the unit.

**MMPHA Policy**

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

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease.
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program.
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and

persons residing in the immediate vicinity of the premises.

- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state, or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

### **Chapter 13 – OWNERS**

Owners play a central role in the HCV program by supplying decent, safe, and sanitary housing for participating families. The term “owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term “owner” includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

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

For detailed information about HCV program responsibilities and process, including PHA policies in key areas, owners will need to refer to several other chapters in this plan.

#### **Owner Recruitment and Retention**

##### **Recruitment**

PHAs are required to ensure very low-income families have access to all types and ranges of affordable housing in the PHA’s jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the PHA to ensure a sufficient number of owners, representing all types and ranges of affordable housing in the PHA’s jurisdiction, are willing to participate in the HCV program. To accomplish this objective, PHA’s must identify and recruit new owner to participate in the program.

##### **MMPHA Policy**

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

- MMPHA will recruit for the program through media announcements if/when deemed necessary.

- MMPHA will hold briefings annually with current and future landlords/owners/agents for open discussion regarding program changes and updates, and landlord/owner/agents' rights.
- MMPHA will maintain a listing of landlords/owners/agents that are willing to lease or have properties available to lease under the Section 8 housing choice voucher program.
- MMPHA distributes printed material about the program to property owners and managers.
- MMPHA develops working relationships with owners/ managers and real estate brokers
- MMPHA will monitor outreach strategies for effectiveness and make adaptations accordingly.

### **Retention**

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

#### **MMPHA Policy**

- MMPHA will provide owners information that explains the program.
- MMPHA will provide owners with a designated PHA contact person.
- MMPHA will coordinate inspections and leasing activities between the PHA, the owner, and the family.
- MMPHA will initiate telephone contact with the owner to explain the inspection process and provide information about housing quality standards.
- MMPHA will provide other written information about how the program operates, including answers to frequently asked questions.

### **Basic HCV Program Requirements**

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

#### **MMPHA Policy**

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

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would

with any potential tenant. MMPHA has no liability or responsibility to the owner or other person for the family's behavior or suitability for tenancy.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RFTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to the PHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RFTA is a copy of the owner's proposed lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions.

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

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

The selected unit must meet HUD's Housing Quality Standards (HQS/NSPIRE) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The PHA will inspect the owner's dwelling unit at various stages of the HCV program participation, to ensure the unit continues to meet HQS/NSPIRE requirements.

The PHA must determine the cost of the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises.

At initial lease-up of a unit, the PHA must determine the share of rent paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)].

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners must use their standard lease when renting to an assisted family. However, the HCV program requires the Tenancy Addendum, which helps standardize the tenancy requirements for all assisted families, be either added word-for-word to that lease or attached to the lease.

The PHA and the owner enter into a formal contractual relationship by executing the Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD.

### **Owner Responsibilities [24 CFR 982.452]**

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

- Complying with all of the owner's obligations under the housing assistance payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS/NSPIRE), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the PHA information required under the HAP contract
- Collecting the security deposit, the tenant rent, and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services that are not the responsibility of the family as specified in the lease
- Allowing reasonable modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Complying with the Violence against Women Reauthorization Act of 2013 (VAWA) when screening prospective HCV tenants or terminating the tenancy of an HCV family.

### **Owner Qualifications**

The PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

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

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



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

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

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

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

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

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

Any waiver request submitted by the PHA must include the following:

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

duties of the position, including any related to the HCV program.

- If the case involves an investment on the part of a member, officer, or employee of the PHA, description of the nature of the investment, including disclosure/divestiture plans.

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

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

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

If the PHA disapproves a request for tenancy because an owner is not qualified, it may not terminate the HAP contract for any assisted families already living in the owner's properties unless the owner has violated the HAP contract for those units

**MMPHA Policy**

MMPHA will refuse to approve a request for tenancy if the PHA becomes aware any of the following are true:

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

- The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.
- The owner has engaged in any drug-related criminal activity or any violent criminal activity.
- The owner has a history or practice of non-compliance with the HQS/NSPIRE for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program.
- The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing; (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) Is drug-related criminal activity or violent criminal activity;
- The owner has a history or practice of renting units that fail to meet state or local housing codes; or
- The owner has not paid state or local real estate taxes, fines, or assessment.
- In considering whether to disapprove owners for any of the discretionary reasons listed above, the PHA will consider any mitigating factors. Such factors may include, but are

not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health, and safety of participating families, among others. Upon consideration of such circumstances, the PHA may, on a case-by-case basis, choose to approve an owner.

### **Legal Ownership of Unit**

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

#### **MMPHA Policy**

The PHA will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without acceptable documentation of legal ownership such as a deed, property tax information or insurance policy.

Landlords must provide the PHA notice of the sale or transfer of property along with contact information concerning the purchaser no later than 15 days after the transfer of property.

### **Non-Discrimination [HAP Contract – Form HUD-52641]**

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

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

### **HAP Contracts**

The HAP contract represents a written agreement between the PHA, and the owner of the dwelling unit occupied by the HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the PHA's obligations. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and lease the space.

If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA execute the HAP contract.

### **HAP Contracts Contents**

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

The HAP contract contains three parts.

Part A of the contract includes basis contract information about the name of the tenant family, address of the contract unit, names of all household members, first and last dates of the initial lease term, amount of initial monthly rent to owner, amount of initial housing assistance payment, utilities and appliances to be supplied by the owner and tenant, signature of the PHA and owner in general, the PHA contract cannot be modified. However, PHA's do have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants.

In addition, PHA's have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the PHA is deemed received by the owner.

**MMPHA Policy**

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

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

Topics addressed in Part B include:

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

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the PHA. The owner must sign the HUD Tenancy Addendum

with the prospective tenant, and the tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

## **HAP Contract Payments**

### **General**

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

The amount of the HAP payment is determined according to policy and is subject to change during the term of the HAP contract. The PHA must notify the owner and family in writing of any changes in the HAP payment.

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

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

The family's share of the rent cannot be more than the difference between the total rent to the owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b) (4)]. The owner may not charge the tenant extra amounts for items customarily included in the rent in the locality or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

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

### **Owner Certification of Compliance**

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

By endorsing the monthly check from the PHA, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS/NSPIRE; that the contract unit is leased to the tenant family

and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

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

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

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

The PHA is not required to pay a late payment penalty if HUD determines the payment is late for reasons beyond the PHA's control. In addition, late payment penalties are not required if the PHA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract.

**Termination of HAP Payments [24 CFR 982. 311(b)]**

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

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

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

**MMPHA Policy**

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

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

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

### **Breach of HAP Contract [24 CFR 982.453]**

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

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

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

The PHA must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline.

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

#### **MMPHA Policy**

Before MMPHA invokes a remedy against an owner, the PHA will evaluate all information and documents available to determine if the contract has been breached. If relevant, MMPHA will conduct an audit of the owner's record pertaining to the tenancy or unit.

If it is determined the owner has breached the contract, MMPHA will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the

owner's record of compliance and the number and seriousness of any prior HAP contract violations.

### **HAP Contract Term and Terminations**

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

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

#### **MMPHA Policy**

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

- Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454].
- The unit does not meet HQS/NSPIRE size requirements due to change in family composition [24 CFR 982.403]
- The unit does not meet HQS/NSPIRE [24 CFR 982.403]
- The family breaks up [HUD Form 52641]
- The owner breaches the HAP contract [24 CFR 982.453(b)]

If the PHA terminates the HAP contract, the PHA must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under the contract.

#### **MMPHA Policy**

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

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



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

### **Changes in Ownership/Assignment of the HAP Contract [HUD-25641]**

The HAP contract cannot be assigned to a new owner without the prior written consent of the PHA. An owner under HAP contract must notify the PHA in writing prior to a change in the legal ownership of the unit. The owner must supply all information requested by the PHA.

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

#### **MMPHA Policy**

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HAP program according to policy.

The PHA must receive a signed, written request form the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract. The new owner must provide a written certification to the PHA that includes:

- A copy of the escrow statement or other document showing the transfer of title and recorded deed.
- A copy of the owner's IRS Form W-9, Request for Taxpayers Identification Number and Certification or social security number of the new owner.
- The effective date of the HAP contract assignment.
- A written agreement to comply with the terms of the HAP contract; and
- Confirmation the new owner is not a prohibited relative.

If the new owner does not agree to assignment of the HAP contract, or fails to provide the necessary documents, the PHA will still terminated the HAP contract with the old owner.

If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, the PHA will process the lease in accordance with policy.

### **Landlord Incentive Payments**

Providing financial and supporting incentive to landlords who rent to new HCV program participants within the 6 counties that our agency services, ~~while~~ if funding is available.

#### **MMPHA Policy**

Incentive may include the following:

- Landlord incentive payments consisting of a lump sum payment of \$500 (or what the HCV Board votes) to be issued to landlords for leasing new HCV families within MMPHA jurisdiction.

## **Chapter 14 – PROGRAM INTEGRITY**

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

HUD and the PHA have policies designed to prevent, detect, investigate, and resolve instances of program abuse or fraud. It also describes the actions that will be taken place in the of unintentional errors and omissions.

**Preventing, Detecting and Investigating Errors and Program Abuse:** The PHA policies related to preventing, detecting, and investigating errors and program abuse.

**Corrective Measures and Penalties:** The Corrective measures the PHA must and may take when errors or program abuses are found.

### **Preventing, Detecting, And Investigation Errors and Program Abuse**

#### **Preventing Errors and Program Abuse**

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and detecting program abuse. PHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

- Provide applicants and participants with form HUD-52675, “Debts Owed to PHAs and Terminations”
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file.

#### **MMPHA Policy**

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

To ensure MMPHA’s HCV program is administered effectively and accordingly to the highest ethical and legal standards, the PHA will employ a variety of techniques to ensure both errors and intentional program abuse is rare.

#### **MMPHA Policy**

MMPHA will discuss program compliance issues during the voucher briefing session.

MMPHA will provide each applicant and participant with a copy of “Is Fraud Worth It?” (Form HUD-1141-OIG) that explains the types of actions a family must avoid and the penalties for program abuse.

The PHA will provide each applicant and participant with a copy of “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19. In addition, the PHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

The PHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key PHA forms and form letters that request information from a family or owner.

In addition, MMPHA staff will be required to review and explain the content of all HUD-and PHA required forms prior to requesting the family members' signatures.

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

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

### **Detecting Errors and Program Abuse**

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

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

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

#### **MMPHA Policy**

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

MMPHA routinely will use available sources of up-front income verification to compare with family provided information.

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

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

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

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

#### **MMPHA Policy**

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

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

### **MMPHA Policy**

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

## **Investigating Errors and Program Abuse**

### **When the PHA Will Investigate**

#### **MMPHA Policy**

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

MMPHA will investigate inconsistent information related to the family that is identified reviews and verification process.

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

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

## **Analysis and Findings**

### **MMPHA Policy**

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

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

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

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

## **Consideration of Remedies**

All errors and instance of program abuse must be corrected prospectively. Whether the PHA will enforce other corrective actions and penalties depend upon the nature of the error or program abuse.

### **MMPHA Policy**

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

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

### **Notice and Appeals**

#### **MMPHA Policy**

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

### **Corrective Measures and Penalties**

#### **Subsidy Under-OR Overpayments**

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

#### **Corrections**

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

#### **MMPHA Policy**

Increases in the family share will be implemented only after the family has received 30 days' notice.

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

### **Reimbursement**

Whether the family or owner is required to reimburse the PHA or the PHA is required to make retroactive subsidy payment to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse.

Policies regarding reimbursement are discussed in the three sections that follow:

## **Family-Caused Errors and Program Abuse**

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

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

## **Family Reimbursement to PHA**

### **MMPHA Policy**

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

## **PHA Reimbursement to Family**

### **MMPHA Policy**

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

## **Prohibited Actions**

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

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

### **MMPHA Policy**

Any of the following will be considered evidence of family program abuse.

- Payment to the owner in excess of amount authorized by the PHA for rent, security deposit, and additional services
- Offering bribes or illegal gratuities to the PHA Board of Commissioners, employees, contractors or other PHA representatives
- Offering payments or other incentives to the owner or third party as an inducement for the third party to make false or misleading statements to the PHA on the family's behalf
- Use of a false name or the use of falsified, forged, or altered documents
- Intentional misreporting of family information or circumstance (e.g., income, family composition)
- Omitted facts that were obviously known by a family member (e.g., not reporting employment income)

- Admission of program abuse by an adult family member
- MMPHA may determine other actions to be program abuse based upon a preponderance of evidence, as defined.

### **Penalties for Program Abuse**

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

- MMPHA may require the family to repay excess subsidy amounts paid by the PHA, as described earlier in this section.
- MMPHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit.
- MMPHA may deny or terminate the family's assistance following the policies set forth.
- MMPHA may refer the family for state or federal criminal prosecution as described.

### **Owner-Caused Error or Program Abuse**

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit are addressed in the appropriate sections of this plan. This section focuses on error and program abuse by owner.

If an incorrect subsidy determination is caused by an owner, the owner must repay the PHA any excess subsidy received. The PHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the PHA may allow the owner to pay in installments over a period of time.

#### **MMPHA Policy**

In cases where the owner has received excess subsidy, MMPHA will require the owner to repay the amount in accordance with policy.

### **Prohibited Owner Actions**

An owner participating in the HCV program must not:

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

#### **MMPHA Policy**

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

- Charging the family rent above or below the amount specified by the PHA
- Charging a security deposit other than that specified in the family's lease
- Charging the family for services that are provided to an unassisted tenant at no extra charge

- Knowingly accept housing assistance payment for any month(s) after the tenant has vacated the unit
- Knowingly accept incorrect or excessive housing assistance payments
- Offering bribes or illegal gratuities to the PHA Board of Commissioners, employees, contractors, or other PHA representatives
- Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the PHA
- Residing in the unit with an assisted family

### **Remedies and Penalties**

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

- Require the owner to repay excess housing assistance payments, as discussed in this section and in accordance with policy.
- Terminate the HAP contract.
- Bar the owner from future participation in any PHA programs.
- Refer the case to the state or federal officials for criminal prosecution.

### **PHA-Caused Errors or Program Abuse**

The responsibilities and expectations of PHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a PHA staff member that is considered errors in, or program abuse related to the HCV program. Additional standards of conduct may be provided in the PHA personnel policy.

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

### **Repayment to the PHA**

Neither a family nor an owner is required to repay any overpayment of subsidy if the error or program abuse is caused by PHA staff.

### **PHA Reimbursement to Family or Owner**

The PHA must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or owner program abuse. Funds for this reimbursement must come from the PHA's administrative fee reserve.

### **Prohibited Activities**

#### **MMPHA Policy**

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



- Failing to comply with any HCV program requirements for personal gain
- Failing to comply with any HCV program requirements as a result of a conflict-of-interest relationship with any applicant, participant, or owner
- Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or material to MMPHA
- Disclosing confidential or proprietary information to outside parties
- Gaining profit as a result of insider knowledge of PHA activities, policies, or practices
- Misappropriating or misusing HCV funds.
- Destroying, concealing, removing, or inappropriately using any records related to the HCV program
- Committing any other corrupt or criminal act in connection with any federal housing program

### **Criminal Prosecution**

#### **MMPHA Policy**

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

### **Fraud and Program Abuse Recoveries**

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

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

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

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

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

## **Chapter 15 – PROGRAM ADMINISTRATION**

This section discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in nine parts as described below:

**Part I: Administrative Fee Reserve.** This part describes the PHA's policies with regard to oversight of expenditures from its administrative fee reserve.

**Part II: Setting Program Standards and Schedules.** This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

**Part III: Informal Reviews and Hearings.** This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

**Part IV: Owner or Family Debts to the PHA.** This part describes policies for recovery of monies that the PHA has overpaid on behalf of families, or to owners, and describes the circumstances under which the PHA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

**Part V: Section 8 Management Assessment Program (SEMAP).** This part describes what the SEMAP scores represent, how they are established, and how those scores affect a PHA.

**Part VI: Record-Keeping.** All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies the PHA will follow.

**Part VII: Reporting and Record Keeping for Children with Elevated Blood Lead Level.** This part describes the PHA's responsibilities for reporting, data collection, and record keeping relative to children with elevated blood lead levels that are less than six years of age and are receiving HCV assistance.

**Part VIII: Determination of Insufficient Funding.** This part describes the PHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

**Part IX: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality.** This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault, and stalking; and maintaining the confidentiality of information obtained from victims.

### **Administrative Fee Reserve**

The PHA must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. If funds in the administrative fee reserve are not needed to cover PHA administrative expenses, the PHA may use these funds for other housing purposes permitted by Federal, State, and local law.

If the PHA has not adequately administered any Section 8 program, HUD may 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 also may prohibit use of the funds for certain purposes. HUD requires the PHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

**MMPHA Policy**

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements.

**Setting Program Standards and Schedules**

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow the PHA to adapt the program to local conditions. This part discusses how the PHA establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- ❖ Payment Standards, dictate the maximum subsidy a family can receive and
- ❖ Utility Allowances, which specify how a family's payment should be adjusted to account for tenant paid utilities

**MMPHA Policy**

Copies of the payment standard and utility allowance schedules are available for review in the PHA's office during normal business hours.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

MMPHA will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

**Payment Standards [24 CFR 982.503; HCV GB, Chapter 7]**

The payment standard sets the maximum subsidy payment a family can receive from the PHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

The PHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the PHA's jurisdiction, and for each unit size within each of the FMR

areas. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, the PHA is required to establish a payment standard within a “basic range” established by HUD – between 90 and 110 percent of the published FMR for each unit size.

#### **MMPHA Policy**

The 90 to 110 percent of FMR discretionary range for area payment standards remains unchanged, but PHAs can increase the payment standard to 120 percent of the FMR without having to seek HUD approval as a reasonable accommodation for a person with a disability. (Section 102(d), amending section 8(o)(1)(D) of the U.S.H.A.)

#### **Updating Payment Standards**

When HUD updates its FMRs, the PHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require the PHA to make further adjustments if it determines that rent burdens for assisted families in the PHA’s jurisdiction are unacceptably high [24 CFR 982.503(g)].

#### **MMPHA Policy**

MMPHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published. In addition to ensuring the payment standards are always within the “basic range”, MMPHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability:** MMPHA will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. MMPHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

**Rent Burden of Participating Families:** Rent burden will be determined by identifying the percentage of families, for each unit size, which are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, MMPHA will consider increasing the payment standard. In evaluating rent burdens, MMPHA will not include families renting a larger unit than their family unit size.

**Quality of Units Selected:** MMPHA will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

**Changes in Rent to Owner:** MMPHA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size. MMPHA will not allow any rent increases should it be necessary to prevent termination of tenants due to lack of sufficient funding,

**Unit Availability:** MMPHA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

**Lease-up Time and Success Rate:** MMPHA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

**MMPHA Policy**

Changes to payment standard amounts will be effective on October 1<sup>st</sup> of every year based on the proposed FMRs. If the PHA has already processed reexaminations that will be effective on or after October 1<sup>st</sup>, and the effective date of the payment standards is October 1<sup>st</sup>, MMPHA will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by MMPHA at the time the reexamination was originally processed.

**Exception Payment Standards [24 CFR 982.503(c)]**

The PHA must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

**Unit-by-Unit Exceptions [24 CFR 982.503(b), 24 CFR 982.505(d), Notice PIH 2010-26]**

Unit-by-unit exceptions to the PHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. This type of exception does not affect the PHA's payment standard schedule. When needed as a reasonable accommodation, the PHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 110 percent of the applicable FMR for the unit size [HCV GB 7-9]. The PHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the FMR.

### **MMPHA Policy**

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, the PHA must determine that:

- There is a shortage of affordable units that would be appropriate for the family
- The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

### **"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]**

If a substantial percentage of families have difficulty finding a suitable unit, the PHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the PHA to set its payment standards at 90-110 percent of a higher FMR (the 50<sup>th</sup>, rather than the 40<sup>th</sup> percentile FMR). To support the request, the PHA must demonstrate that during the most recent 6-month period for which information is available:

- ❖ Fewer than 75 percent of families who were issued vouchers became participants.
- ❖ The PHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- ❖ The PHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, the PHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the PHA's jurisdiction within the FMR area.

### **Decreases in the Payment Standard Below the Basic Range [24 CFR 982.503(d)]**

The PHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

### **Utility Allowances [24 CFR 982.517]**

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. The PHA must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

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

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, 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; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type.

### **Air Conditioning**

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

#### **MMPHA Policy**

MMPHA has included an allowance for air-conditioning in its schedule. Central air-conditioning or a portable air conditioner must be present in a unit before MMPHA will apply this allowance to a family's rent and subsidy calculations.

### **Reasonable Accommodation**

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on the PHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the PHA will approve an allowance for air-conditioning, even if the PHA has determined that an allowance for air-conditioning generally is not needed.

### **Utility Allowance Revisions**

The PHA must review its schedule of utility allowances each year and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

The PHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

### **Informal Reviews and Hearings**

When the PHA makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing. PHAs are required to include in their administrative plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d) (12) and (13)].

## **Informal Reviews**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554] and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

## **Decisions Subject to Informal Review**

The PHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a) (2)]:

- ❖ Denying listing on the PHA waiting list
- ❖ Denying or withdrawing a voucher
- ❖ Refusing to enter into a HAP contract or approve a lease
- ❖ Refusing to process or provide assistance under portability procedures

Informal reviews are not required for the following reasons [24 CFR 982.554(c)]:

- ❖ Discretionary administrative determinations by the PHA
- ❖ General policy issues or class grievances
- ❖ A determination of the family unit size under the PHA subsidy standards
- ❖ A PHA determination not to grant approval of the tenancy
- ❖ A PHA determination that the unit is not in compliance with the HQS/NSPIRE
- ❖ A PHA determination that the unit is not in accordance with the HQS/NSPIRE due to family size or composition

### **MMPHA Policy**

MMPHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes denying listing on the PHA waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

## **Notice to the Applicant [24 CFR 982.554(a)]**

The PHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the PHA decision and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

## **Scheduling an Informal Review**

### **MMPHA Policy**

A request for an informal review must be made in writing and delivered to the PHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the PHA’s denial of assistance.



MMPHA must schedule and send written notice of the informal review within 10 business days of the family's request.

**Informal Review Procedures [24 CFR 982.554(b)]**

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to present written or oral objections to the decision of the PHA.

**Informal Review Decision [24 CFR 982.554(b)]**

The PHA must notify the applicant of the PHA's final decision, including a brief statement of the reasons for the final decision.

**MMPHA Policy**

In rendering a decision, the PHA will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the notice to the family.
- The validity of the grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.
- The validity of the evidence. The PHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, the PHA will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, the PHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.
- The PHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.
- If the decision to deny is overturned as a result of the informal review, processing for admission will resume.
- If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

**Informal Hearings for Participants [24 CFR 982.555]**

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the PHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the PHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

The PHA is not permitted to terminate a family's assistance until the time allowed for the family

to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

### **Decisions Subject to Informal Hearing**

Circumstances for which the PHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
  - A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule
  - A determination of the family unit size under the PHA's subsidy standards
  - A determination to terminate assistance for a participant family because of the family's actions or failure to act
  - A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules
  - A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]
- Circumstances for which an informal hearing is not required are as follows:
- Discretionary administrative determinations by the PHA
  - General policy issues or class grievances
  - Establishment of the PHA schedule of utility allowances for families in the program
  - A PHA determination not to approve an extension or suspension of a voucher term
  - A PHA determination not to approve a unit or tenancy
  - A PHA determination that a unit selected by the applicant is not in compliance with the HQS/NSPIRE
  - A PHA determination that the unit is not in accordance with HQS/NSPIRE because of family size
  - A determination by the PHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

#### **MMPHA Policy**

MMPHA will offer participants the opportunity for an informal hearing when required by regulations.

When the PHA makes a decision that is subject to informal hearing procedures, the PHA must inform the family of its right to an informal hearing at the same time it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, the PHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to the PHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

#### **MMPHA Policy**

In cases where MMPHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

- The proposed action or decision of MMPHA.
- A brief statement of the reasons for the decision including the regulatory reference.
- The date the proposed action will take place.
- A statement of the family's right to an explanation of the basis for MMPHA's decision.
- A statement that if the family does not agree with the decision, the family may request an informal hearing of the decision.
- A deadline for the family to request the informal hearing.
- To whom the hearing request should be addressed.
- A copy of the MMPHA's hearing procedures.

#### **Scheduling an Informal Hearing [24 CFR 982.555(d)]**

When an informal hearing is required, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

#### **MMPHA Policy**

A request for an informal hearing must be made in writing and delivered to the PHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the PHA's decision or notice to terminate assistance.

The PHA must schedule and send written notice of the informal hearing to the family within 10 business days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the PHA may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear within 20 minutes of the scheduled time and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the PHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The PHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

**Pre-Hearing Right to Discovery [24 CFR 982.555(e)]**

Participants and the PHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

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

For the purpose of informal hearings, documents include records and regulations.

**MMPHA Policy**

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 \$1.00 per page. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

**Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]**

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

**Informal Hearing Officer [24 CFR 982.555(e)(4)]**

Informal hearings will be conducted by a person or persons approved by the PHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

**MMPHA Policy**

MMPHA has designated the following to serve as hearing officers:

The President of the Board of MMPHA, and/or CMCA Executive Director and/or his/her designee

**Attendance at the Informal Hearing**

**MMPHA Policy**

Hearings will be attended by a 3-person panel designated by the Housing Program Manager, or Executive Director or anyone they appoint. The panel shall include at least

one person who is not employed by MMPHA or CMCA. The following applicable persons are required at the hearing:

MMPHA representative(s) and any witnesses for MMPHA

The participant and any witnesses for the participant

The participant's counsel or other representative

Any other person approved by MMPHA as a reasonable accommodation for a person with a disability

### **Conduct at Hearings**

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA's hearing procedures [24 CFR 982.555(4) (ii)].

#### **MMPHA Policy**

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive, or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

### **Evidence [24 CFR 982.555(e) (5)]**

The PHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

#### **MMPHA Policy**

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

**Oral evidence:** the testimony of witnesses

**Documentary evidence:** a writing which is relevant to the case, for example, a letter written to the PHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either the PHA or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

## **Procedures for Rehearing or Further Hearing**

### **MMPHA Policy**

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the PHA will take effect and another hearing will not be granted.

## **Hearing Officer's Decision [24 CFR 982.555(e) (6)]**

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

### **MMPHA Policy**

In rendering a decision, the hearing officer will consider the following matters:

- **PHA Notice to the Family:** The hearing officer will determine if the reasons for the PHA's decision are factually stated in the Notice.
- **Discovery:** The hearing officer will determine if the PHA and the family were given the opportunity to examine any relevant documents in accordance with PHA policy.
- **PHA Evidence to Support the PHA Decision:** The evidence consists of the facts presented. Evidence is not conclusion, and it is not argument. The hearing officer will evaluate the facts to determine if they support the PHA's conclusion.
- **Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of the PHA will be overturned.

The hearing officer will issue a written decision to the family and the PHA no later than 10 business days after the hearing. The report will contain the following information:

- **Hearing information:**
  - Name of the participant.
  - Date, time and place of the hearing.
  - Name of the hearing officer.
  - Name of the PHA representative; and
  - Name of family representative (if any).
- **Background:** A brief, impartial statement of the reason for the hearing.
- **Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her

testimony and that are admitted into evidence.

- **Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.
- **Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the PHA's decision.
- **Order:** The hearing report will include a statement of whether the PHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the PHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct the PHA to restore the participant's program status.

#### **Issuance of Decision [24 CFR 982.555(e)(6)]**

A copy of the hearing must be furnished promptly to the family.

##### **MMPHA Policy**

The hearing officer will mail a "Notice of Hearing Decision" to the PHA and to the participant on the same day. This notice will be sent by first-class mail. The participant will be mailed the original "Notice of Hearing Decision" and a copy of the proof of mailing. A copy of the "Notice of Hearing Decision" will be maintained in the PHA's file.

#### **Effect of Final Decision [24 CFR 982.555(f)]**

The PHA is not bound by the decision of the hearing officer for matters in which the PHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to federal, state, or local laws.

If the PHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the PHA must promptly notify the family of the determination and the reason for the determination.

##### **MMPHA Policy**

The Executive Director has the authority to determine that the PHA is not bound by the decision of the hearing officer because the PHA was not required to provide a hearing, the decision exceeded the authority of the hearing officer, the decision conflicted with or contradicted HUD regulations, requirements, or the decision was otherwise contrary to federal, state, or local laws.

In such a case, the PHA will mail a “Notice of Final Decision” to the PHA and the participant on the same day. The “Notice of Final Decision” will be sent by first-class mail. A copy of this notice will be maintained in the PHA’s file.

### **Hearing and Appeal Provisions for Noncitizens [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the family from exercising the right, which may otherwise be available, to seek redress directly through judicial procedures.

### **Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

The notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria, and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

### **USCIS Appeal Process [24 CFR 5.514(e)]**

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and the proof of mailing.



### **MMPHA Policy**

MMPHA will notify the family in writing of the results of the USCIS secondary verification within 10 calendar days of receiving the results.

The family must provide MMPHA with a copy of the written request for appeal and proof of mailing within 10 calendar days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to MMPHA, of its decision. When the USCIS notifies MMPHA of the decision, MMPHA must notify the family of its right to request an informal hearing.

### **MMPHA Policy**

MMPHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

## **Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of denial, or within 30 days of receipt of the USCIS appeal decision. The informal hearing procedures for applicant families are described below.

### **Informal Hearing Officer**

The PHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

### **Evidence**

The family must be provided the opportunity to examine and copy, at the family's expense and at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

### **MMPHA Policy**

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility

under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

### **Representation and Interpretive Services**

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf. The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or the PHA, as may be agreed upon by the two parties.

### **Recording of the Hearing**

The family is entitled to have the hearing recorded by audiotape. The PHA may, but is not required, to provide a transcript of the hearing.

#### **MMPHA Policy**

MMPHA will not provide a transcript of an audio taped hearing.

### **Hearing Decision**

The PHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

### **Informal Hearing Procedures for Residents [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 calendar days of receipt of the PHA notice of termination, or within 30 calendar days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status.

### **Retention of Documents [24 CFR 5.514(h)]**

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process:

- ❖ The application for assistance
- ❖ The form completed by the family for income reexamination
- ❖ Photocopies of any original documents, including original USCIS documents
- ❖ The signed verification consent form
- ❖ The USCIS verification results

- ❖ The request for a USCIS appeal
- ❖ The final USCIS determination
- ❖ The request for an informal hearing
- ❖ The final informal hearing decision

### **Owner or Family Debts to the PHA**

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the PHA [24 CFR 982.54]. This part describes the PHA's policies for recovery of monies that have been overpaid on behalf of families, or to owners.

#### **MMPHA Policy**

When an action or inaction of an owner or participant results in the overpayment of housing assistance, the PHA holds the owner or participant liable to return any overpayments to MMPHA. The PHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments. When an owner or participant refuses to repay monies owed to MMPHA, MMPHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil lawsuit
- State income tax set-off program
- Inspector General Office

### **Repayment Policy**

#### **Owner Debts to the PHA**

##### **MMPHA Policy**

Any amount due to the PHA by an owner must be repaid by the owner within 30 days of the PHA determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, the PHA will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments the PHA may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by the PHA.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA will ban the owner from future participation in the program and pursue other modes of collection.

### **Family Debts to the PHA**

#### **MMPHA Policy**

Any amount owed to the PHA by an HCV family must be repaid by the family. If the

family is unable to repay the debt within 30 days, the PHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA will terminate assistance and pursue other modes of collection.

### **Repayment Agreement [24 CFR 792.103]**

The term repayment agreement refers to a formal written document signed by a tenant or owner and provided to the PHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

### **General Repayment Agreement Guidelines for Families**

#### **Down Payment Requirement**

##### **MMPHA Policy**

Before executing a repayment agreement with a family, the PHA will generally require a down payment of 20 percent of the total amount owed. If the family can provide evidence satisfactory to the PHA that a down payment of 20 percent would impose an undue hardship, the PHA may, in its sole discretion, require a lesser percentage or waive the requirement.

#### **Payment Thresholds**

Notice PIH 2010-19 recommends that the total amount that a family must pay each month—the family’s monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family’s monthly adjusted income. However, a family may already be paying 40 per cent or more of its monthly adjusted income in rent. Moreover, Notice PIH 2010-19 acknowledges that PHAs have the discretion to establish “thresholds and policies” for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

##### **MMPHA Policy**

The PHA has established the following thresholds for repayment of debts:

Amounts between \$3,000 and the federal or state threshold for criminal prosecution must be repaid within 36 months. Amounts between \$2,000 and \$2,999 must be repaid within 30 months. Amounts between \$1,000 and \$1,999 must be repaid within 24 months. Amounts under \$1,000 must be repaid within 12 months.

If a family can provide evidence satisfactory to the PHA that the threshold applicable to the family’s debt would impose an undue hardship, the PHA may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, the PHA will consider all relevant information, including the following:

The amount owed by the family to the PHA

The reason for the debt, including whether the debt was the result of family

action/inaction or circumstances beyond the family's control  
The family's current and potential income and expenses  
The family's current family share, as calculated under 24 CFR 982.515  
The family's history of meeting its financial responsibilities

### **Execution of the Agreement**

#### **MMPHA Policy**

Any repayment agreement between the PHA and a family must be signed and dated by the PHA and by the head of household and spouse/cohead (if applicable).

### **Due Dates**

#### **MMPHA Policy**

All payments are due by the close of business on the 5th day of the month. If the 5th does not fall on a business day, the due date is the close of business on the first business day after the 5th.

### **Late or Missed Payments**

#### **MMPHA Policy**

If a current MMPHA participating family misses 2 consecutive payments, a delinquency notice will be sent. The participant will be given 10 business days to pay the remaining balance in full to remain on the program. If payment is not received it will be considered a breach of the agreement and the PHA will terminate assistance upon written notification to the family. The participating family will be terminated and not eligible to reapply for assistance for 5 years and until the balance has been paid in full.

### **No Offer of Repayment Agreement**

#### **MMPHA Policy**

The PHA generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family or if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

### **Repayment Agreements Involving Improper Payments**

Notice PIH 2010-19 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the family briefing packet that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the PHA may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to the PHA the monthly payment amount specified in the agreement but must also pay to the owner the

family's monthly share of the rent to owner

- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance

### **Section 8 Management Assessment Program (SEMAP)**

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect the PHA in several ways.

- High-performing PHAs can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- PHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].
- PHAs with an overall rating of "troubled" are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHAs that are designated "troubled" may not use any part of the administrative fee reserve for other housing purposes [24 CFR 985.107].
- HUD may determine that a PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR 985.109].

### **SEMAP Certification [24 CFR 985.101]**

PHAs must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by PHA board resolution and signed by the PHA executive director. If the PHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

PHAs with less than 250 voucher units are only required to be assessed every other PHA fiscal year. HUD will assess such PHAs annually if the PHA elects to have its performance assessed on an annual basis; or is designated as "troubled" [24 CFR 985.105].

Failure of a PHA to submit its SEMAP certification within the required time frame will result in an overall performance rating of "troubled."

A PHA's SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of the PHA's SEMAP certification, HUD will rate the PHA's performance under each SEMAP indicator in accordance with program requirements.

## HUD Verification Method

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. The PHA or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module (formerly known as MTCS) in the PIH Information Center (PIC), and HUD determines that those data are insufficient to verify the PHA's certification on the indicator due to the PHA's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

## SEMAP Indicators [24 CFR 985.3 and form HUD-52648]

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.

A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not rated under SEMAP indicators 1-7.

SEMAP Indicators
<p><b>Indicator 1: Selection from the waiting list</b> <b>Maximum Score: 15</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list.</li><li>• Points are based on the percent of families that are selected from the waiting list in accordance with the PHA's written policies, according to the PHA's quality control sample.</li></ul>
<p><b>Indicator 2: Rent reasonableness</b> <b>Maximum Score: 20</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units</li><li>• Points are based on the percent of units for which the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the PHA's quality control sample.</li></ul>
<p><b>Indicator 3: Determination of adjusted income</b> <b>Maximum Score: 20</b></p> <ul style="list-style-type: none"><li>• This indicator measures whether the PHA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent.</li></ul>

<ul style="list-style-type: none"> <li>• Points are based on the percent of files that are calculated and verified correctly, according to the PHA’s quality control sample.</li> </ul>
<p><b>Indicator 4: Utility allowance schedule</b></p> <p><b>Maximum Score: 5</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether the PHA maintains an up-to-date utility allowance schedule.</li> <li>• Points are based on whether the PHA has reviewed the utility allowance schedule and adjusted it when required, according to the PHA’s certification.</li> </ul>
<p><b>Indicator 5: HQS/NSPIRE quality control inspections</b></p> <p><b>Maximum Score: 5</b></p> <p>This indicator shows whether a PHA supervisor reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements for quality control of HQS/NSPIRE inspections.</p> <p>Points are based on whether the required quality control reinspection were completed, according to the PHA’s certification.</p>
<p><b>Indicator 6: HQS/NSPIRE enforcement</b></p> <p><b>Maximum Score: 10</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether, following each HQS/NSPIRE inspection of a unit under contract where the unit fails to meet HQS/NSPIRE, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.</li> <li>• Points are based on whether the PHA corrects all HQS/NSPIRE deficiencies in accordance with required time frames, according to the PHA’s certification.</li> </ul>
<p><b>Indicator 7: Expanding housing opportunities</b></p> <p><b>Maximum Points: 5</b></p> <ul style="list-style-type: none"> <li>• Only applies to PHAs with jurisdiction in metropolitan FMR areas.</li> <li>• This indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside the PHA’s jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration.</li> <li>• Points are based on whether the PHA has adopted and implemented written policies in accordance with SEMAP requirements, according to the PHA’s certification.</li> </ul>
<p><b>Indicator 8: FMR limit and payment standards</b></p> <p><b>Maximum Points: 5 points</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA’s</li> </ul>



<p>jurisdiction, which are within the basic range of 90 to 110 percent of the published FMR.</p> <ul style="list-style-type: none"> <li>• Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA’s certification.</li> </ul>
<p><b>Indicator 9: Annual reexaminations</b>  <b>Maximum Points: 10</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months.</li> <li>• Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.</li> </ul>
<p><b>Indicator 10: Correct tenant rent calculations</b>  <b>Maximum Points: 5</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether the PHA correctly calculates the family’s share of the rent to owner.</li> <li>• Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.</li> </ul>
<p><b>Indicator 11: Pre-contract HQS/NSPIRE inspections</b>  <b>Maximum Points: 5</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether newly leased units pass HQS/NSPIRE inspection on or before the effective date of the assisted lease and HAP contract.</li> <li>• Points are based on the percent of newly leased units that passed HQS/NSPIRE inspection prior to the effective date of the lease and HAP contract, according to data from PIC.</li> </ul>
<p><b>Indicator 12: Annual HQS/NSPIRE inspections</b>  <b>Maximum Points: 10</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether the PHA inspects each unit under contract at least annually.</li> <li>• Points are based on the percent of annual HQS/NSPIRE inspections of units under contract that are more than 2 months overdue, according to data from PIC.</li> </ul>
<p><b>Indicator 13: Lease-up</b>  <b>Maximum Points: 20 points</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether the PHA enters HAP contracts for the number of units or funding reserved under ACC for at least one year.</li> <li>• Points are based on the percent of units leased during the last completed PHA fiscal year, or the percent of allocated budget authority that has been expended by the PHA, according to data from the PHA’s last year-end operating statement that is recorded in HUD’s accounting system.</li> </ul>
<p><b>Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances</b>  <b>Maximum Points: 10</b></p>

<ul style="list-style-type: none"> <li>• Only applies to PHAs with mandatory FSS programs.</li> <li>• This indicator shows whether the PHA has enrolled families in the FSS program as required and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.</li> <li>• Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.</li> </ul>
<p><b>Success Rate of Voucher Holders</b></p> <p><b>Maximum Points: 5</b></p> <ul style="list-style-type: none"> <li>• Only applies to PHAs that have received approval to establish success rate payment standard amounts and is not effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.</li> <li>• This indicator shows whether voucher holders were successful in leasing units with voucher assistance.</li> <li>• Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.</li> </ul>
<p><b>De-concentration Bonus Indicator</b></p> <p><b>Maximum Points: 5</b></p> <ul style="list-style-type: none"> <li>• Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50-percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50<sup>th</sup> percentile.</li> <li>• Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.</li> <li>• Points are based on whether the data that is submitted meets the requirements for bonus points.</li> </ul>

### **Record Keeping**

The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

### **Record Retention [24 CFR 982.158]**

During the term of each assisted lease, and for at least three years thereafter, the PHA must keep:

- ❖ A copy of the executed lease.
- ❖ The HAP contract; and
- ❖ The application from the family.

In addition, the PHA must keep the following records for at least three years:

- ❖ Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants.
- ❖ An application from each ineligible family and notice that the applicant is not eligible.
- ❖ HUD-required reports.
- ❖ Unit inspection reports.
- ❖ Lead-based paint records as required by 24 CFR 35, Subpart B.
- ❖ Accounts and other records supporting PHA budget and financial statements for the program.
- ❖ Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- ❖ Other records specified by HUD.

Notice PIH 2014-20 requires PHA's to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

The PHA must keep confidential records of all emergency transfer requested by victims of domestic violence, dating violence, sexual assault, and stalking under the PHA's Emergency Transfer Plan, as well as the outcomes of such requests, and the records for a period of three years.

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents.

### **Records Management**

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

#### **MMPHA Policy**

All applicant and participant information will be kept in a secure location and access will be limited to authorized PHA staff.

PHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

### **Privacy Act Requirements [24 CFR 5.212 and Form-9886]**

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

### **Upfront Income Verification (UIV) Records**

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g., electronic, paper). These requirements are contained in the HUD issued document, Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data.

#### **MMPHA Policy**

The PHA has adopted and implemented the EIV security procedures required by HUD.

### **Criminal Records**

The PHA may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation. However, a record of the screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28]. This requirement does not apply to information that is public information or is obtained by a PHA other than under 24 CFR 5.905.

### **Medical/Disability Records**

PHAs are not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA should not place this information in the tenant file. The PHA should destroy the document.

### **Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

For requirements and PHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, or stalking, see previous section.

### **Reporting and Record Keeping for Children with Elevated Blood Lead Level**

The PHA has certain responsibilities relative to children with elevated blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Housing Quality Standards section. This part deals with the reporting requirements, and data collection and record keeping responsibilities that the PHA is subject to.

#### **Reporting Requirement [24 CFR 35.1225(e)]**

The PHA must report the name and address of a child identified as having an elevated blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

#### **MMPHA Policy**

MMPHA will provide the public health department written notice of the name and address of any child identified as having an elevated blood lead level.

#### **Data Collection and Record Keeping [24 CFR 35.1225(f)]**

At least quarterly, the PHA must attempt to obtain from the public health department(s) within its area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified elevated blood lead level.

If the PHA obtains names and addresses of elevated blood lead level children from the public health department(s), it must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, the PHA must carry out the notification, verification, and hazard reduction requirements.

At least quarterly, the PHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

#### **MMPHA Policy**

The public health department(s) has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, the PHA is not providing such a report.

### **Determination of Insufficient Funding**

The HCV regulations allow PHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.354(e)(1) and 982.454]. If a PHA denies a family a portability move based on insufficient funding, the PHA is required to notify the local HUD office within 10 business days [24 CFR 982.354]. Insufficient funding may also impact the

PHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology the PHA will use to determine whether or not the PHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

### **Methodology**

The MMPHA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing the PHA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, the PHA will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if the PHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, the PHA will be considered to have insufficient funding.

### **Violence Against Women Act (VAWA): Notification, Documentation, Confidentiality**

The Violence against Women Act of 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws apply in conjunction with VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and PHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and PHA policies are located primarily in the following sections: 3-I.C, "Family Breakup and Remaining Member of Tenant Family"; 3-III.G, "Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, and Stalking"; 10-I.A, "Allowable Moves"; 10-I.B, "Restrictions on Moves"; 12-II.E, "Terminations Related to Domestic Violence, Dating Violence, or Stalking"; and 12-II.F, "Termination Notice."

### **Definitions [24 CFR 5.2003, 42 USC 13925]**

As used in VAWA:

- The term bifurcate means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- The term dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship

- The term domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- The term affiliated individual means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
  - Any other individual, tenant, or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- The term sexual assault means: Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks the capacity to consent
- The term stalking means: To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

#### **Notification [24 CFR 5.2005(a)]**

##### **Notification to Public**

MMPHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

##### **MMPHA Policy**

The PHA will post the following information regarding VAWA in its offices and on its website. It will also make the information readily available to anyone who requests it.

- A copy of the notice of occupancy rights under VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (Form HUD-5380)
- A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation
- A copy of the PHA's emergency transfer plan
- A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383
- The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY)
- Contact information for local victim advocacy groups or service providers

##### **Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)]**

PHAs are required to inform program applicants and participants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination

of housing benefits.

**MMPHA Policy**

The PHA will provide all applicants with information about VAWA at the time they request an application for housing assistance, as part of the written briefing packet, and at the time the family is admitted to the program. The PHA will also include information about VAWA in all notices of denial of assistance.

The PHA will provide all participants with information about VAWA at the time of admission and at annual reexamination. The PHA will also include information about VAWA in notices of termination of assistance.

The VAWA information provided to applicants and participants will consist of the notices.

The PHA is not limited to providing VAWA information at the times specified in the above policy. If the PHA decides to provide VAWA information to a participant following an incident of domestic violence, Notice PIH 2017-08 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases the PHA make alternative delivery arrangements that will not put the victim at risk.

**MMPHA Policy**

Whenever the PHA has reason to suspect that providing information about VAWA to a participant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, the PHA may decide not to send mail regarding VAWA protections to the victim's unit if the PHA believes the perpetrator may have access to the victim's mail, unless requested by the victim.

When discussing VAWA with the victim, the PHA will take reasonable precautions to ensure that no one can overhear the conversation, such as having conversations in a private room.

The victim may, but is not required to, designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

**Notification to Owners and Managers**

While PHAs are no longer required by regulation to notify owners and managers participating in the HCV program of their rights and obligations under VAWA, the PHA may still choose to inform them.

**MMPHA Policy**

The PHA will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the program and at least annually thereafter.

The VAWA information provided to owners will consist of the notice in Exhibit 16-5 and a copy of form HUD-5382, Certification of Domestic Violence, Dating Violence,



and Stalking and Alternate Documentation.

**Documentation [24 CFR 5.2007]**

A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. The PHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the PHA’s request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

- (1) A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.
- (2) A federal, state, tribal, territorial, or local police report or court record, or an administrative record
- (3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a mental health professional; or a medical professional. The person signing the documentation must attest under penalty of perjury to the person’s belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The PHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under “Conflicting Documentation,” nor may it require certification in addition to third-party documentation [VAWA final rule].

**MMPHA Policy**

Any request for documentation of domestic violence, dating violence, sexual assault or stalking will be in writing, will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

The PHA may, in its discretion, extend the deadline for 10 business days. In determining whether to extend the deadline, the PHA will consider factors that may contribute to the victim’s inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim’s need to address health or safety issues. Any extension granted by the PHA will be in writing.

Once the victim provides documentation, the PHA will acknowledge receipt of the documentation within 10 business days.

### **Conflicting Documentation [24 CFR 5.2007(e)]**

In cases where the PHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the PHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The PHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to the PHA. Individuals have 30 calendar days to return third-party verification to the PHA. If the PHA does not receive third-party documentation, and the PHA will deny or terminate assistance as a result, the PHA must hold separate hearings for the tenants [Notice PIH 2017-08].

The PHA must honor any court orders issued to protect the victim or to address the distribution of property.

#### **MMPHA Policy**

If presented with conflicting certification documents from members of the same household, the PHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(e) and by following any HUD guidance on how such determinations should be made.

When requesting third-party documents, the PHA will provide contact information for local domestic violence and legal aid offices. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.

If the PHA does not receive third-party documentation within the required timeframe (and any extensions) the PHA will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, the PHA will hold separate hearings for the applicants or tenants.

### **Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]**

The PHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

#### **MMPHA Policy**

If the PHA accepts an individual's statement or other corroborating evidence (as determined by the victim) of domestic violence, dating violence, sexual assault, or stalking, the PHA will document acceptance of the statement or evidence in the individual's file.

### **Failure to Provide Documentation [24 CFR 5.2007(c)]**

In order to deny relief for protection under VAWA, a PHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as the PHA may allow, the PHA may deny relief for protection under VAWA.

### **Confidentiality [24 CFR 5.2007(b)(4)]**

All information provided to the PHA regarding domestic violence, dating violence, sexual assault, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. This means that the PHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

### **MMPHA Policy**

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

## **Chapter 16 – Other Housing Programs**

### **Foster Youth to Independence Tenant Protection Vouchers**

The Department of Housing and Urban Development (HUD) introduced the Foster Youth to Independence for Public Housing Authorities to request Tenant Protection Vouchers to serve youth under the age of 24 with a history of child welfare involvement, for up to 36 months. The initiative aims to address gaps in availability of Family Unification Programs, increases housing options for youth with a current history of child welfare involvement that are homeless or at risk of homelessness, and contribute to the federal goal of preventing and ending youth homelessness.

Mid-Missouri Public Housing created a formal partnership with the Missouri Dept. of Social Services – Children’s Division to establish the criteria and referral process and to identify the youth population. Number of vouchers will not exceed 25 Foster Youth to Independence Vouchers per fiscal year to assist homeless and at risk of becoming homeless youth in our service area.

### **Mainstream Vouchers**

Mainstream vouchers assist non-elderly persons with disabilities. Aside from serving a special population, Mainstream vouchers are administered using the same rules as other housing choice vouchers. Funding and financial reporting for Mainstream vouchers is separate from the regular tenant-based voucher program.

## **Chapter 17 – Project-Based Vouchers**

### **GENERAL REQUIREMENTS**

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is

consistent with the PHA's 5yr/Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

#### **MMPHA Policy**

The PHA will operate a project-based voucher program using up to 20 percent of its authorized units for project-based assistance.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, the PHA is not required to reduce the number of these units if the number of authorized units is subsequently reduced. However, the PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the PHA has vouchers available for project-basing [FR Notice 1/18/17].

#### **Additional Project-Based Units [FR Notice 1/18/17]**

The PHA may project-base an additional 10 percent of its units above the 20 percent program limit, if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302).
- Are specifically made available to house families that are comprised of or include a veteran. -*Veteran* means an individual who has served in the United States Armed Forces.
- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.
- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.  
-For these projects, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

#### **MMPHA Policy**

The PHA will not set aside units above the 20 percent program limit unless approved by Executive Director and/or Board of Commissioners.

#### **TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]**

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

- Allowed PHAs to attach assistance (project-based vouchers) to structures in which the PHA has an ownership interest or control without following a competitive process.

- Allowed PHAs to use 20% of their regular Section 8 vouchers for “project-based vouchers”, tying them to units instead of to families
- Allowed PHAs to use 10% (on top of the 20% expansion) of its vouchers to provide units for:
  - families formerly experiencing homelessness, veterans, persons with disabilities, and the elderly; or
  - in regions where the regular tenant-based vouchers are difficult to use.[3]
- Allowed PHAs to use project-based vouchers in the greater of either 25% of a project’s units (assisted or unassisted) or 25 units per development, unless:
  - the project provides 100% supportive and/or elderly housing; or
  - They are located in a region where the regular tenant-based vouchers are difficult to use.
- Allowed PHAs to project-base 40% for projects with elderly and supportive housing (not counting the 20%):
  - located in low-poverty census tracts (poverty rate of 20% or less); and
  - in areas where vouchers are difficult to use.
- Extended the maximum term length of the initial PBV contract (and contract extension) from 15 years to 20 years.
- Allowed PHAs to attach vouchers to units in which the PHA has an ownership interest or control without following a competitive process.

**MMPHA Policy**

Except as otherwise noted, or unless specifically prohibited by PBV program regulations, the PHA policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants. MMPHA submitted proposals will be selected for PBV usage.

PHA-Owned Units [24 CFR 983.51(e), 983.59, Notice PIH 2015-05, and FR Notice 1/18/17]

A PHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. If the PHA selects a proposal for housing that is owned or controlled by the PHA, the PHA must identify the entity that will review the PHA proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of PHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the PHA and a HUD-approved independent entity. In addition, an independent entity must determine the rent to owner, the redetermined rent to owner, and reasonable rent. Housing quality standards inspections must also be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

**MMPHA Policy**

The PHA may submit a proposal for project-based housing that is owned or controlled by the PHA. If the proposal for PHA-owned housing is selected, the PHA will use Central Missouri Community Action to review the PHA selection and to administer the PBV program. The PHA will obtain HUD approval of Central Missouri Community Action prior to selecting the proposal for PHA-owned housing.

The PHA may only compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services. The PHA and independent entity may not charge the family any fee for the appraisal, or the services provided by the independent entity.

### **Environmental Review [24 CFR 983.58]**

The PHA activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The responsible entity is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The PHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

The PHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

The PHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The PHA must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

### **Dwelling Units**

#### **Overview**

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

#### **Housing Quality Standards [24 CFR 983.101]**

The housing quality standards (HQS/NSPIRE) for the tenant-based program, including those for special housing types, generally apply to the PBV program. HQS/NSPIRE requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

#### **Lead-based Paint [24 CFR 983.101(c)]**

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846),

the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

### **Housing Accessibility For Persons With Disabilities**

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

### **Inspecting Units**

Pre-selection Inspection [24 CFR 983.103(a)]

The PHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date and must determine whether the units substantially comply with HQS/NSPIRE. To qualify as existing housing, units must substantially comply with HQS/NSPIRE on the proposal selection date. However, the PHA may not execute the HAP contract until the units fully comply with HQS/NSPIRE, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS/NSPIRE inspection as a result of only non-life-threatening conditions, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS/NSPIRE inspection as a result of only non-life-threatening conditions.

### **Pre-HAP Contract Inspections [24 CFR 983.103(b); FR Notice 1/18/17]**

The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with HQS/NSPIRE, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS/NSPIRE inspection as a result of only non-life-threatening conditions.

#### **MMPHA Policy**

The PHA will not enter into a PBV HAP contract until all units that will be under contract fully comply with HQS/NSPIRE.

### **Turnover Inspections [24 CFR 983.103(c)]**

Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS/NSPIRE.

### **Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]**

At least once every 24 months during the term of the HAP contract, the PHA must inspect a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS/NSPIRE. Turnover inspections are not counted toward meeting this inspection requirement.

### **MMPHA Policy**

The PHA will inspect on an annual basis a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS/NSPIRE.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

### **Other Inspections [24 CFR 983.103(e)]**

The PHA must inspect contract units whenever needed to determine that the contract units comply with HQS/NSPIRE, and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS/NSPIRE violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS/NSPIRE.

In conducting PHA supervisory quality control HQS/NSPIRE inspections, the PHA should include a representative sample of both tenant-based and project-based units.

### **Inspecting PHA-Owned Units [24 CFR 983.103(f)]**

In the case of PHA-owned units, the inspections must be performed by an independent agency designated by the PHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located. The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

### **Housing Assistance Payments Contract (HAP) Overview**

The PHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. With the exception of single-family scattered-site projects, a HAP contract shall cover a single project. If multiple projects exist, each project is covered by a separate HAP contract. The HAP contract must be in the form required by HUD [24 CFR 983.202(a)].

### **HAP Contract Requirements**

Contract Information [24 CFR 983.203]

The HAP contract must specify the following information:

The total number of contract units by number of bedrooms.

The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building.



The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit.

Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner.

Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant.

Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8.

The HAP contract term.

The number of units in any project that will exceed the 25 percent per project cap, which will be set aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and

The initial rent to owner for the first 12 months of the HAP contract term.

#### **Execution of the HAP Contract [24 CFR 983.204]**

The PHA may not enter into a HAP contract until each contract unit has been inspected and the PHA has determined that the unit complies with the Housing Quality Standards (HQS/NSPIRE), unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS/NSPIRE inspection as a result of only non-life-threatening conditions. For existing housing, the HAP contract must be executed promptly after the PHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after the PHA has inspected the completed units and has determined that the units have been completed in accordance with the agreement to enter into HAP, and the owner furnishes all required evidence of completion.

##### **MMPHA Policy**

The HAP contract will be executed within 10 business days of the PHA determining that all units pass HQS/NSPIRE.

#### **Term of HAP Contract [24 CFR 983.205; FR Notice 1/18/17]**

The PHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 20 years. In the case of PHA-owned units, the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

##### **MMPHA Policy**

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At the time of the initial HAP contract term or any time before expiration of the HAP contract, the PHA may extend the term of the contract for an additional term of up to 20 years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 20 years. A PHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable

housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of PHA-owned units, any extension of the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

**MMPHA Policy**

When determining whether or not to extend an expiring PBV contract, the PHA will consider several factors including, but not limited to:

The cost of extending the contract and the amount of available budget authority.

The condition of the contract units.

The owner's record of compliance with obligations under the HAP contract and lease(s).

Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and

Whether the funding could be used more appropriately for tenant-based assistance.

**Termination by PHA [24 CFR 983.205(c); FR Notice 1/18/17]**

The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the PHA in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

In times of insufficient funding, HUD requires that PHAs first take all cost-saving measures prior to failing to make payments under existing PBV HAP contracts.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

**Termination by Owner [24 CFR 983.205(d)]**

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to the PHA. In this case, families living in the contract units must be offered tenant-based assistance.

**Contract Termination or Expiration [24 CFR 983.206; FR Notice 1/18/17]**

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify the PHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the

terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher. Tenant-based assistance would not begin until the owner's required notice period ends. The PHA must provide the family with a voucher and the family must also be given the option by the PHA and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness requirements. The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA HCV tenant-based program and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

#### **Remedies for HQS/NSPIRE Violations [24 CFR 983.208(b)]**

The PHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS/NSPIRE. If the PHA determines that a contract does not comply with HQS/NSPIRE, the PHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

#### **MMPHA Policy**

The PHA will abate and terminate PBV HAP contracts for non-compliance with HQS/NSPIRE in accordance with the policies used in the tenant-based voucher program.

#### **Amendments To The HAP Contract**

##### **Substitution of Contract Units [24 CFR 983.207(a)]**

At the PHA's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Before any such substitution can take place, the PHA must inspect the proposed unit and determine the reasonable rent for the unit.

##### **Addition of Contract Units [FR Notice 1/18/17]**

The PHA and owner may amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements found at 24 CFR 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, the PHA must submit to the local field office information outlined in FR Notice 1/18/17. The PHA must also

detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

**MMPHA Policy**

The PHA will not add contract units to the HAP contract.

**HAP Contract Year, Anniversary And Expiration Dates [24 CFR 983.207(b) and 983.302(e)]**

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates), or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

**Owner Responsibilities Under The HAP [24 CFR 983.210]**

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS/NSPIRE.

The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases.

Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements.

To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence.

The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.

The amount of the HAP the owner is receiving is correct under the HAP contract.

The rent for contract units does not exceed rents charged by the owner for comparable unassisted units.

Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit.

The family does not own or have any interest in the contract unit (does not apply to family's membership in a cooperative); and

Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

## **Selection Of PBV Program Participants Overview**

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

### **Eligibility For PBV Assistance [24 CFR 983.251(a) and (b)]**

The PHA may select families for the PBV program from those who are participants in the PHA's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the PHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

#### **MMPHA Policy**

The PHA will determine an applicant family's eligibility for the PBV program in accordance with the policies set forth.

### **In-Place Families [24 CFR 983.251(b)]**

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by the PHA is considered an "in-place family." These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on the PHA's waiting list. Once the family's continued eligibility is determined (the PHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and the PHA must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

### **Organization Of The Waiting List [24 CFR 983.251(c)]**

The PHA may establish a separate waiting list for PBV units, or it may use the same waiting list for both tenants based and PBV assistance. The PHA may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the PHA. If the PHA chooses to offer a separate waiting list for PBV assistance, the PHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If a PHA decides to establish a separate PBV waiting list, the PHA may use a single waiting list for the PHA's whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

#### **MMPHA Policy**

The PHA will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance. The PHA currently has waiting lists for the following PBV projects:

### **Selection From The Waiting List [24 CFR 983.251(c)]**

Applicants who will occupy units with PBV assistance must be selected from the PHA's waiting list. The PHA may establish selection criteria or preferences for occupancy of particular PBV units. The PHA may place families referred by the PBV owner on its PBV waiting list.

### **Income Targeting [24 CFR 983.251(c)(6)]**

At least 75 percent of the families admitted to the PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the waiting list must be extremely low-income families. The income targeting requirement applies to the total of admissions to both programs.

### **Units with Accessibility Features [24 CFR 983.251(c)(7)]**

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the PHA must first refer families who require such features to the owner.

### **Preferences [24 CFR 983.251(d), FR Notice 11/24/08]**

The PHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. The PHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B. above.

The PHA may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that preference is consistent with the PHA plan. The PHA may not, however, grant a preference to a person with a specific disability [FR Notice 1/18/17].

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If the PHA has projects with “excepted units” for elderly families or supportive services, the PHA must give preference to such families when referring families to these units [24 CFR 983.261(b); FR Notice 1/18/17].

#### **MMPHA Policy**

The PHA will not offer any additional preferences for the PBV program or for particular PBV projects or units.

#### **Offer Of PBV Assistance Refusal of Offer [24 CFR 983.251(e)(3)]**

The PHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

Refuse to list the applicant on the waiting list for tenant-based voucher assistance.

Deny any admission preference for which the applicant qualifies.

Change the applicant’s place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA’s selection policy.

Remove the applicant from the tenant-based voucher waiting list.

#### **Disapproval by Landlord [24 CFR 983.251(e)(2)]**

If a PBV owner rejects a family for admission to the owner’s units, such rejection may not affect the family’s position on the tenant-based voucher waiting list.

Acceptance of Offer [24 CFR 983.252]

#### **Family Briefing**

When a family accepts an offer for PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the PHA must provide a briefing packet that explains how the PHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

#### **Family Briefing**

If an applicant family’s head or spouse is disabled, the PHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

#### **Persons with Limited English Proficiency**

The PHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

#### **Owner Selection Of Tenants**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant’s ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)].

**Leasing [24 CFR 983.253(a)]**

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the PHA from the PHA's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the PHA's subsidy standards.

**Filling Vacancies [24 CFR 983.254(a)]**

The owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the PHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The PHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

**MMPHA Policy**

The owner must notify the PHA in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy.

The PHA will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner.

**Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]**

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

**MMPHA Policy**

If any contract units have been vacant for 120 days, the PHA will give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. The PHA will provide the notice to the owner within 10 business days of the 120th day of the vacancy. The amendment to the HAP contract will be effective the 1st day of the month following the date of the PHA's notice.

**Family Briefing****PHA Responsibility**

The PHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

**MMPHA Policy**

The PHA will not conduct screening to determine a PBV applicant family's suitability for tenancy.

The PHA must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by the PHA) of the family's current landlord and any prior landlords.

In addition, the PHA may offer the owner other information the PHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The PHA must provide applicant families a description of



the PHA policy on providing information to owners, and the PHA must give the same types of information to all owners.

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

**MMPHA Policy**

The PHA will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the turnover HQS/NSPIRE inspection or before. The PHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

**Owner Responsibility**

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

Payment of rent and utility bills.

Caring for a unit and premises.

Respecting the rights of other residents to the peaceful enjoyment of their housing.

Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and

Compliance with other essential conditions of tenancy.

**Occupancy Overview**

After an applicant has been selected from the waiting list, determined eligible by the PHA, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

**Lease [24 CFR 983.256]**

The tenant must have legal capacity to enter a lease under state and local law. Legal capacity means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

**Form of Lease [24 CFR 983.256(b)]**

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease.

The PHA may review the owner's lease form to determine if the lease complies with state and local law. If the PHA determines that the lease does not comply with state or local law, the PHA may decline to approve the tenancy.

**MMPHA Policy**

The PHA will not review the owner's lease for compliance with state or local law.

**Lease Requirements [24 CFR 983.256(c)]**

The lease for a PBV unit must specify all the following information:

The names of the owner and the tenant.

The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit).

The term of the lease (initial term and any provision for renewal).

The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements.

A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and

The amount of any charges for food, furniture, or supportive services.

**Tenancy Addendum [24 CFR 983.256(d)]**

The tenancy addendum in the lease must state:

The program tenancy requirements.

The composition of the household as approved by the PHA (the names of family members and any PHA-approved live-in aide).

All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

**Initial Term and Lease Renewal [24 CFR 983.256(f)]**

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g., month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

The owner terminates the lease for good cause

The tenant terminates the lease

The owner and tenant agree to terminate the lease

The PHA terminates the HAP contract

The PHA terminates assistance for the family

**Changes in the Lease [24 CFR 983.256(e)]**

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the PHA a copy of all changes.

The owner must notify the PHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the PHA and in accordance with the terms of the lease relating to its amendment.

The PHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

#### **Owner Termination of Tenancy [24 CFR 983.257]**

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days. PHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

#### **Continuation of Housing Assistance Payments [24 CFR 982.258]**

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

##### **MMPHA Policy**

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

#### **Security Deposits [24 CFR 983.259]**

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits more than private market practice, or more than amounts charged by the owner to unassisted tenants.

##### **MMPHA Policy**

The PHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

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

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

## **Moves**

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260]

If the PHA determines that a family is occupying a wrong size unit, based on the PHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

### **MMPHA Policy**

The PHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of the PHA's determination. The PHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

PBV assistance in the same building or project.

PBV assistance in another project; and

Tenant-based voucher assistance.

If the PHA offers the family a tenant-based voucher, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

If the PHA offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the PHA and remove the unit from the HAP contract.

### **MMPHA Policy**

When the PHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, the PHA will terminate the housing assistance payments at the expiration of this 30-day period.

The PHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

**Family Right to Move [24 CFR 983.261]**

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the PHA. If the family wishes to move with continued tenant-based assistance, the family must contact the PHA to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, the PHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

**Emergency Transfers under VAWA [Notice PIH 2017-08]**

Except where special consideration is needed for the project-based voucher program, the PHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4).

HUD requires that the PHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

**MMPHA Policy**

When the victim of domestic violence, dating violence, sexual assault, or stalking has lived in the unit for less than one year, the PHA will provide several options for continued assistance.

The PHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where the PHA has PBV units. The PHA will expedite the administrative processes in this case to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in the PHA's public housing program. Such a decision will be made by the PHA based on the availability of tenant-based vouchers and/or vacancies in public housing units. Such families must be selected from the waiting list for the applicable program. The PHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking in both its HCV and public housing programs to expedite this process. See Section 4-III.C. of this administrative plan.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, the PHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where the PHA has PBV units. The PHA

will expedite the administrative processes in this case to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to the PHA's public housing program. The PHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking as part of the public housing ACOP in order to expedite this process.

### **Determining Rent To Owner Overview**

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

### **Rent Limits [24 CFR 983.301]**

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance.

The reasonable rent; or

The rent requested by the owner.

### **Certain Tax Credit Units [24 CFR 983.301(c)]**

For certain tax credit units, the rent limits are determined differently than for other PBV units.

Different limits apply to contract units that meet all the following criteria:

The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986.

The contract unit is not located in a qualified census tract.

There are comparable tax credit units of the same bedroom size as the contract unit in the same project, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and

The tax credit rent exceeds 110 percent of the fair market rent or any approved exception payment standard; For contract units that meet all these criteria, the rent to owner must not exceed the lowest of:

The tax credit rent minus any utility allowance.

The reasonable rent; or

The rent requested by the owner.

## **Definitions**

A qualified census tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

Tax credit rent is the rent charged for comparable units of the same bedroom size in the project that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

## **Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)]**

The PHA must determine reasonable rent in accordance with 24 CFR 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

To correct errors in calculations in accordance with HUD requirements

If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 CFR 983.55

If a decrease in rent to owner is required based on changes in the allocation of the responsibility for utilities between owner and tenant

If the PHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

### **MMPHA Policy**

The PHA will elect within the HAP contract not to reduce rents below the initial level, with the exception of circumstances listed in 24 CFR 983.302(c)(2). If, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent, the PHA will use the higher initial rent to owner amount.

## **Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]**

When determining the initial rent to owner, the PHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, the PHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the PHA may for initial rent, use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment standard amount for use in the PBV program.

Likewise, the PHA may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

### **MMPHA Policy**

Upon written request by the owner, the PHA will consider using the FMR or utility

allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. The PHA will review and make a decision based on the circumstances and merit of each request.

In addition to considering a written request from an owner, the PHA may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent, if the PHA determines it is necessary due to PHA budgetary constraints.

### **Redetermination of Rent [24 CFR 983.302]**

The PHA must redetermine the rent to owner upon the owner's request or when there is a 10 percent or greater decrease in the published FMR.

### **Rent Increase**

If an owner wishes to request an increase in the rent to owner from the PHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by the PHA. The PHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

#### **MMPHA Policy**

An owner's request for a rent increase must be submitted to the PHA 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

The PHA may not approve, and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS/NSPIRE. The owner may not receive any retroactive increase of rent for any period of noncompliance.

### **Rent Decrease**

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

### **Notice of Rent Change**

The rent to owner is redetermined by written notice by the PHA to the owner specifying the amount of the redetermined rent. The PHA notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

#### **MMPHA Policy**

The PHA will provide the owner with at least 30 days written notice of any change in the



amount of rent to owner.

### **PHA-Owned Units [24 CFR 983.301(g)]**

For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The PHA must use the rent to owner established by the independent entity.

### **Reasonable Rent [24 CFR 983.303]**

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHA, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

### **When Rent Reasonable Determinations Are Required**

The PHA must redetermine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

There is a 10 percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date.

The PHA approves a change in the allocation of responsibility for utilities between the owner and the tenant.

The HAP contract is amended to substitute a different contract unit in the same building or project; or

There is any other change that may substantially affect the reasonable rent.

### **How to Determine Reasonable Rent**

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

### **Comparability Analysis**

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

### **PHA-Owned Units**

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent

entity must provide a copy of the determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

### **Owner Certification of Reasonable Rent**

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, the PHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

### **Tenant Rent To Owner [24 CFR 983.353]**

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the PHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the PHA notice to the family and owner. The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

### **Tenant and PHA Responsibilities**

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the PHA.

Likewise, the PHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The PHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The PHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

### **Utility Reimbursements**

If the amount of the utility allowance exceeds the total tenant payment, the PHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

The PHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

#### **MMPHA Policy**

The PHA will make utility reimbursements to the utility company.

### **Other Fees And Charges [24 CFR 983.354]**

#### **Meals and Supportive Services**

Except for PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

**Other Charges by Owner**

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

## **GLOSSARY OF SUBSIDIZED HOUSING TERMS**

- Absorption.*** In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.
- Accessible.*** The facility or portion of the facility can be approached, entered, and used by persons with disabilities.
- Adjusted income.*** Annual income, less allowable HUD deductions and allowances.
- Administrative fee.*** Fee paid by HUD to the PHA for administration of the program.  
See §982.152.
- Administrative plan.*** The plan that describes PHA policies for administration of the tenant-based programs. The Administrative Plan and any revisions must be approved by the PHA's board and included as a supporting document to the PHA Plan. See §982.54.
- Admission.*** The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.
- Affiliated individual.*** With respect to an individual, a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis (in the place of a parent), or any individual, tenant, or lawful occupant living in the household of that individual
- Amortization payment.*** In a manufactured home space rental: The monthly debt service payment by the family to amortize the purchase price of the manufactured home.
- Annual.*** Happening once a year.
- Annual contributions contract (ACC).*** The written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.
- Annual income.*** The anticipated total income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations.
- Applicant (applicant family).*** A family that has applied for admission to a program but is not yet a participant in the program.
- Area exception rent.*** An amount that exceeds the published FMR. See 24 CFR 982.504(b).
- As-paid states.*** States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.
- Assets.*** (See *net family assets.*)
- Auxiliary aids.*** 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.
- Biennial.*** Happening every two years.

***Bifurcate.*** With respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

***Budget authority.*** An amount authorized and appropriated by the Congress for payment to PHAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

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

***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.

***Citizen.*** A citizen or national of the United States.

***Cohead.*** An individual in the household who is equally responsible for the lease with the head of household. A family may have a cohead or spouse but not both. A cohead never qualifies as a dependent. The cohead must have legal capacity to enter into a lease.

***Common space.*** In shared housing, the space available for use by the assisted family and other occupants of the unit.

***Computer match.*** The automated comparison of databases containing records about individuals.

***Confirmatory review.*** An on-site review performed by HUD to verify the management performance of a PHA.

***Consent form.*** Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the collection of other information to determine eligibility or level of benefits.

***Congregate housing.*** Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see 24 CFR 982.606–609.

***Contiguous MSA.*** In portability (under subpart H of part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

***Continuously assisted.*** An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

***Contract authority.*** The maximum annual payment by HUD to a PHA for a funding increment.

**Cooperative** (term includes mutual housing). Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type (see 24 CFR 982.619).

**Covered families.** Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance 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 the assistance.

**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 shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

**Dependent.** A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

**Dependent child.** In the context of the student eligibility restrictions, a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* as specified above.

**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.

**Disabled family.** A family whose head, cohead, 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.

**Disabled person.** See *person with disabilities*.

**Disallowance.** Exclusion from annual income.

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

**Domestic violence.** Felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or

youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**Domicile.** The legal residence of the household head or spouse as determined in accordance with state and local law.

**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.

**Economic self-sufficiency program.** Any program designed to encourage, assist, train, or facilitate the economic independence of assisted families, or to provide work for such families. Can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as treatment for drug abuse or mental health treatment). Includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). Also see 24 CFR 5.603(c).

**Elderly family.** A family whose head, cohead, 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.

**Elderly person.** An individual who is at least 62 years of age.

**Eligible family** A family that is income eligible and meets the other requirements of the 1937 Act and Part 5 of 24 CFR. See also *family*.

**Employer identification number (EIN).** The nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation.

**Evidence of citizenship or eligible status.** The documents which must be submitted as evidence of citizenship or eligible immigration status. See 24 CFR 5.508(b).

**Extremely low-income family.** A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher. Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30 percent of median income if HUD finds such variations are necessary due to unusually high or low family incomes. See 24 CFR 5.603.

**Facility.** 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.

**Fair Housing Act.** Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

**Fair market rent (FMR).** The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe, and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the *Federal Register* in accordance with 24 CFR Part 888.

**Family.** Includes but is not limited to the following, regardless of actual or perceived sexual

- orientation, gender identity, or marital status, and can be further defined in PHA policy.
- A family with or without children (the temporary absence of a child from the home due to placement in foster care is not considered in determining family composition and family size)
- An elderly family or a near-elderly family
- A displaced family
- The remaining member of a tenant family
- A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

**Family rent to owner.** In the voucher program, the portion of rent to owner paid by the family.

**Family self-sufficiency program** (FSS program). The program established by a PHA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).

**Family share.** The portion of rent and utilities paid by the family. For calculation of family share, see 24 CFR 982.515(a).

**Family unit size.** The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

**Federal agency.** A department of the executive branch of the federal government.

**Foster childcare payment.** A payment to eligible households by state, local, or private agencies appointed by the state to administer payments for the care of foster children.

**Full-time student.** A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). See 24 CFR 5.603.

**Funding increment.** Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

**Gender identity.** Actual or perceived gender-related characteristics.

**Gross rent.** The sum of the rent to owner plus any utility allowance.

**Group home.** A dwelling unit that is licensed by a state as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). (A special housing type: see 24 CFR 982.610–614.)

**Handicap.** Any condition or characteristic that renders a person an individual with handicaps. (See *person with disabilities*.)

**HAP contract.** The housing assistance payments contract. A written contract between the PHA and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

**Head of household.** The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

**Household.** A household includes additional people other than the family who, with the



PHA's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

**Housing assistance payment.** The monthly assistance payment by a PHA, which includes: (1) A payment to the owner for rent to the owner under the family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

**Housing agency (HA).** See *public housing agency*.

**Housing quality standards (HQS).** The HUD minimum quality standards for housing assisted under the voucher program.

**HUD.** The U.S. Department of Housing and Urban Development.

**Imputed asset.** An asset disposed of for less than fair market value during the two years preceding examination or reexamination.

**Imputed asset income.** The PHA-established passbook rate multiplied by the total cash value of assets. The calculation is used when net family assets exceed \$5,000.

**Imputed welfare income.** An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction but is included in the family's annual income and therefore reflected in the family's rental contribution.

**Income.** Income from all sources of each member of the household, as determined in accordance with criteria established by HUD.

**Income for eligibility.** Annual income.

**Income information** means information relating to an individual's income, including:

- All employment income information known to current or previous employers or other income sources
- All information about wages, as defined in the state's unemployment compensation law, including any social security number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, employer identification number of an employer reporting wages under a state unemployment compensation law

-Whether an individual is receiving, has received, or has applied for unemployment compensation, and the amount and the period received

-Unearned IRS income and self-employment, wages, and retirement income

-Wage, social security, and supplemental security income data obtained from the Social Security Administration. **Individual with handicaps.** See *person with disabilities*.

**Initial PHA.** In portability, the term refers to both: (1) A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

**Initial payment standard.** The payment standard at the beginning of the HAP contract term.

**Initial rent to owner.** The rent to owner at the beginning of the HAP contract term.

***Institution of higher education.*** An institution of higher education as defined in 20 U.S.C. 1001 and 1002. See Exhibit 3-2 in this Administrative Plan.

***Jurisdiction.*** The area in which the PHA has authority under state and local law to administer the program.

***Landlord.*** Either the owner of the property or his/her representative, or the managing agent or his/her representative, as shall be designated by the owner.

***Lease.*** A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

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

- Is determined to be essential to the care and well-being of the persons.
- Is not obligated for the support of the persons; and

-Would not be living in the unit except to provide the necessary supportive services.

***Living/sleeping room.*** A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space. A bedroom or living/sleeping room must have at least one window and two electrical outlets in proper operating condition. See HCV GB p. 10-6 and 24 CFR 982.401.

***Local preference.*** A preference used by the PHA to select among applicant families.

***Low-income family.*** A family whose income does not exceed 80 percent of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80 percent for areas with unusually high or low incomes.

***Manufactured home.*** A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence and meets the HQS/NSPIRE. (A special housing type: see 24 CFR 982.620 and 982.621.)

***Manufactured home space.*** In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See 24 CFR 982.622 to 982.624.

***Medical expenses.*** Medical expenses, including medical insurance premiums, which are anticipated during the period for which annual income is computed, and that are not covered by insurance (a deduction for elderly or disabled families only). These allowances are given when calculating adjusted income for medical expenses in excess of 3 percent of annual income.

***Minor.*** A member of the family household other than the family head 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.

**Monthly adjusted income.** One twelfth of adjusted income.

**Monthly income.** One twelfth of annual income.

**Mutual housing.** Included in the definition of *cooperative*.

**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.

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

**Net family assets.** (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land, and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

- In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under §5.609.
- In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

**Noncitizen.** A person who is neither a citizen nor national of the United States.

**Notice of funding availability (NOFA).** For budget authority that HUD distributes by competitive process, the *Federal Register* document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

**Office of General Counsel (OGC).** The General Counsel of HUD.

**Overcrowded.** A unit that does not meet the following HQS/NSPIRE space standards:  
(1) Provide adequate space and security for the family; and (2) Have at least one bedroom or living/sleeping room for each two persons.

**Owner.** Any person or entity with the legal right to lease or sublease a unit to a participant.

**PHA Plan.** The annual plan and the 5-year plan as adopted by the PHA and approved by HUD.

**PHA's quality control sample.** An annual sample of files or records drawn in an unbiased manner and reviewed by a PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. For minimum sample size see CFR 985.3.

**Participant (participant family).** A family that has been admitted to the PHA program and is

currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

**Payment standard.** The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

**Person with disabilities.** *For the purposes of program eligibility.* A person who has a disability as defined under the Social Security Act or Developmental Disabilities Care Act, or a person who has a physical or mental impairment expected to be of long and indefinite duration and whose ability to live independently is substantially impeded by that impairment but could be improved by more suitable housing conditions. This includes persons with AIDS or conditions arising from AIDS but excludes persons whose disability is based solely on drug or alcohol dependence. *For the purposes of reasonable accommodation.* A person with a physical or mental impairment that substantially limits one or more major life activities, a person regarded as having such an impairment, or a person with a record of such an impairment.

**Portability.** Renting a dwelling unit with a Section 8 housing choice voucher outside the jurisdiction of the initial PHA.

**Premises.** The building or complex in which the dwelling unit is located, including common areas and grounds.

**Previously unemployed.** With regard to the earned income disallowance, a person with disabilities 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.

**Private space.** In shared housing, the portion of a contract unit that is for the exclusive use of an assisted family.

**Processing entity.** The person or entity that, under any of the programs covered, is responsible for making eligibility and related determinations and any income reexamination. In the HCV program, the “processing entity” is the “responsible entity.”

**Project owner.** The person or entity that owns the housing project containing the assisted dwelling unit.

**Public assistance.** Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by federal, state, or local governments.

**Public housing agency (PHA).** Any state, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, which is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

**Qualified family** (under the earned income disallowance). A family participating in an applicable assisted housing program or receiving HCV assistance:

- Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment.
- Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other

job training program; or

- Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance-- provided that the total amount over a six-month period is at least \$500.

**Qualified census tract.** With regard to certain tax credit units, any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent, and where the census tract is designated as a qualified census tract by HUD.

**Reasonable rent.** A rent to owner that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.

**Reasonable accommodation.** A change, exception, or adjustment to a rule, policy, practice, or service to allow a person with disabilities to fully access the PHA's programs or services.

**Receiving PHA.** In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

**Recertification.** Sometimes called *reexamination*. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported.

**Remaining member of the tenant family.** The person left in assisted housing who may or may not normally qualify for assistance on their own circumstances (i.e., an elderly spouse dies, leaving widow aged 47 who is not disabled).

**Rent to owner.** The total monthly rent payable to the owner under the lease for the unit (also known as contract rent). Rent to owner covers payment for any housing services, maintenance, and utilities that the owner is required to provide and pay for.

**Residency preference.** A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area (See *residency preference area*).

**Residency preference area.** The specified area where families must reside to qualify for a residency preference.

**Responsible entity.** For the public housing and the Section 8 tenant-based assistance, project-based voucher assistance, and moderate rehabilitation programs, the responsible entity means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

**Secretary.** The Secretary of Housing and Urban Development.

**Section 8.** Section 8 of the United States Housing Act of 1937.

**Section 8 covered programs.** All HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8 assisted housing for which loans are made under Section 202 of the Housing Act of 1959.

**Section 214.** Section 214 of the Housing and Community Development Act of 1980, as amended.

**Section 214 covered programs.** The collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in 24 CFR 5.500.

**Security deposit.** A dollar amount (maximum set according to the regulations) which can be used for unpaid rent or damages to the owner upon termination of the lease.

**Set-up charges.** In a manufactured home space rental, charges payable by the family for assembling, skirting, and anchoring the manufactured home.

**Sexual assault.** Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent (42 U.S.C. 13925(a)).

**Sexual orientation.** Homosexuality, heterosexuality, or bisexuality.

**Shared housing.** A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. (A special housing type: see 24 CFR 982.615–982.618.)

**Single person.** A person living alone or intending to live alone.

**Single room occupancy housing (SRO).** A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. (A special housing type: see 24 CFR 982.602–982.605.)

**Social security number (SSN).** The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

**Special admission.** Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.

**Special housing types.** See subpart M of part 982. Subpart M states the special regulatory requirements for: SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

**Specified welfare benefit reduction.** Those reductions of welfare benefits (for a covered family) that may not result in a reduction of the family rental contribution. A reduction of welfare benefits because of fraud in connection with the welfare program, or because of welfare sanction due to noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

**Spouse.** The marriage partner of the head of household.

**Stalking.** To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or to place under surveillance with the intent to kill, injure, harass, or intimidate

another person; and in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

**State wage information collection agency (SWICA).** The state agency, including any Indian tribal 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.

**Subsidy standards.** Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

**Suspension.** The term on the family's voucher stops from the date the family submits a request for PHA approval of the tenancy, until the date the PHA notifies the family in writing whether the request has been approved or denied. This practice is also called *tolling*.

**Tax credit rent.** With regard to certain tax credit units, the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

**Tenancy addendum.** For the housing choice voucher program, the lease language required by HUD in the lease between the tenant and the owner.

**Tenant.** The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

**Tenant rent to owner.** See *family rent to owner*.

**Term of lease.** The amount of time a tenant agrees in writing to live in a dwelling unit.

**Total tenant payment (TTP).** The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

**Unit.** Residential space for the private use of a family. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from zero (0) bedrooms to six (6) bedrooms.

**Utilities.** Water, electricity, gas, other heating, refrigeration, cooking fuels, trash collection, and sewage services. Telephone service is not included.

**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 or approved by a PHA or HUD 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.

**Utility reimbursement.** In the voucher program, the portion of the housing assistance payment which exceeds the amount of rent to owner.

**Utility hook-up charge.** In a manufactured home space rental: Costs payable by a family for connecting the manufactured home to utilities such as water, gas, electrical and sewer lines.

**Very low-income family.** A low-income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and

larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the housing choice voucher program.

**Veteran.** A person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released therefrom under conditions other than dishonorable.

**Violence Against Women Reauthorization Act (VAWA) of 2013.** Prohibits denying admission to the program to an otherwise qualified applicant or terminating assistance on the basis that the applicant or program participant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

**Violent criminal activity.** Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

**Voucher (housing choice voucher).** A document issued by a PHA to a family selected for admission to the housing choice voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

**Voucher holder.** A family holding a voucher with an unexpired term (search time).

**Voucher program.** The housing choice voucher program.

**Waiting list.** A list of families organized according to HUD regulations and PHA policy who are waiting for a unit to become available.

**Waiting list admission.** An admission from the PHA waiting list.

**Welfare assistance.** Income assistance from federal or state welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, childcare or other services for working families. For the FSS program (984.103(b)), *welfare assistance* includes only cash maintenance payments from federal or state programs designed to meet a family's ongoing basic needs, but does not include food stamps, emergency rental and utilities assistance, SSI, SSDI, or social security.