

## CHAPTER 1: OVERVIEW OF THE PROGRAM AND PLAN

### 1. INTRODUCTION

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

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

There are three parts to this chapter:

Part I: The Public Housing Agency (PHA). This part includes a description of the PHA, its jurisdiction, its programs, and its mission and intent.

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

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

### PART I: THE PHA

#### 1-I.A MISSION STATEMENT

The Laurinburg Housing Authority's mission is to provide housing that is attractive and affordable; and that is a suitable living environment for low-income citizens by:

- ❖ Developing funding resources;
- ❖ Maintaining existing housing stock;
- ❖ Promoting quality of life service programs;
- ❖ Promoting self-sufficiency and upward mobility; and
- ❖ Staying abreast of current and future trends.

#### 1-I.B. ORGANIZATION AND STRUTURE OF THE PHA

The Laurinburg Housing Authority administers various housing programs. This Administrative Plan is applicable to the operation of the Housing Choice Voucher Program, RAD Project-Based Voucher Program, Project-Based Voucher for Tax Credit Properties, and the Family Self-Sufficiency Program.

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by the **Laurinburg Housing Authority** for the jurisdiction of **Laurinburg, Scotland County, NC**.

The officials of a PHA are known as commissioners or, collectively, as the board of commissioners. Commissioners are appointed in accordance with state housing law and

generally serve in the same capacity as the directors of a corporation. The Commissioners establish policies under which the PHA conducts business, ensure PHA staff follow policies and ensure that the PHA is successful in its mission. The board is responsible for preserving and expanding the agency's resources and assuring the agency has continued viability.

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

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

### **1-I.C. COMMITMENT TO ETHICS AND SERVICE**

The Board of Commissioners of the Authority desires to create a culture of ethical conduct for Commissioners, staff, contractors, and related organizations in the conducting of the business of the corporation. To that end, the Board has developed a policy with standards and procedures by which the Board can monitor and respond to any incident of unethical or criminal behavior. The Board of Commissioners will promote ethical behavior and deal appropriately with unethical or criminal behavior in the operations of the Authority. Also, as a public service agency, the PHA is committed to providing excellent service to HCV program participants, owners, and to the community. The PHA's standards include:

Abide by the terms of the personnel policy and work in the best interest of the Authority;

- ❖ Be efficient and frugal in the execution of duties and not misuse time or material belonging to the Authority;
- ❖ Avoid being placed in a position of conflict of interest in the execution of duties and in the implementation of this Administrative Plan;
- ❖ Deal honestly and fairly with others in the transaction of business;
- ❖ Follow federal and state law and the regulatory requirements of funding agencies;
- ❖ Report to senior management or the Board of Commissioners any potential conflict of interest, any breach of the Ethics Standards, or any criminal activity.
- ❖ Ensure decent, safe, and sanitary housing – in compliance with program housing quality standards – for very low income families while ensuring that family rents are fair, reasonable, and affordable
- ❖ Encourage self-sufficiency of participant families and assist in the expansion of family opportunities, which address educational, socio-economic, recreational and other human service's needs.
- ❖ Promote fair housing and the equal opportunity for very low-income families of all ethnic backgrounds to experience freedom of housing choice.
- ❖ Promote a housing program which maintains quality service and integrity while providing an incentive to private property owners to rent to very low-income families.

- ❖ Promote a market-driven housing program that will help qualified low-income families be successful in obtaining affordable housing and increase the supply of housing choices for such families.
- ❖ Create positive public awareness and expand the level of family, owner, and community support in accomplishing the PHA's mission.
- ❖ Attain and maintain a high level of standards and professionalism in day-to-day management of all program components
- ❖ Administer an efficient, high-performing agency through continuous improvement of the PHA's support systems and a high level of commitment to our employees and their development.

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

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

The Section 8 Housing Choice Voucher Program, the dominant form of federal housing assistance, was created in the 1970s. Through this program low-income families use vouchers to help pay for housing in the private market while the project-based voucher program helps the family to pay rent based on income at a specific development. Seventy-five percent (75%) of new households admitted each year must be extremely low-income with incomes not exceeding 30% of the local median or the poverty line, whichever is higher. The purpose of the program is to provide assistance for very low-income households (single or family), the elderly, and the disabled to afford decent, safe, and sanitary housing.

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

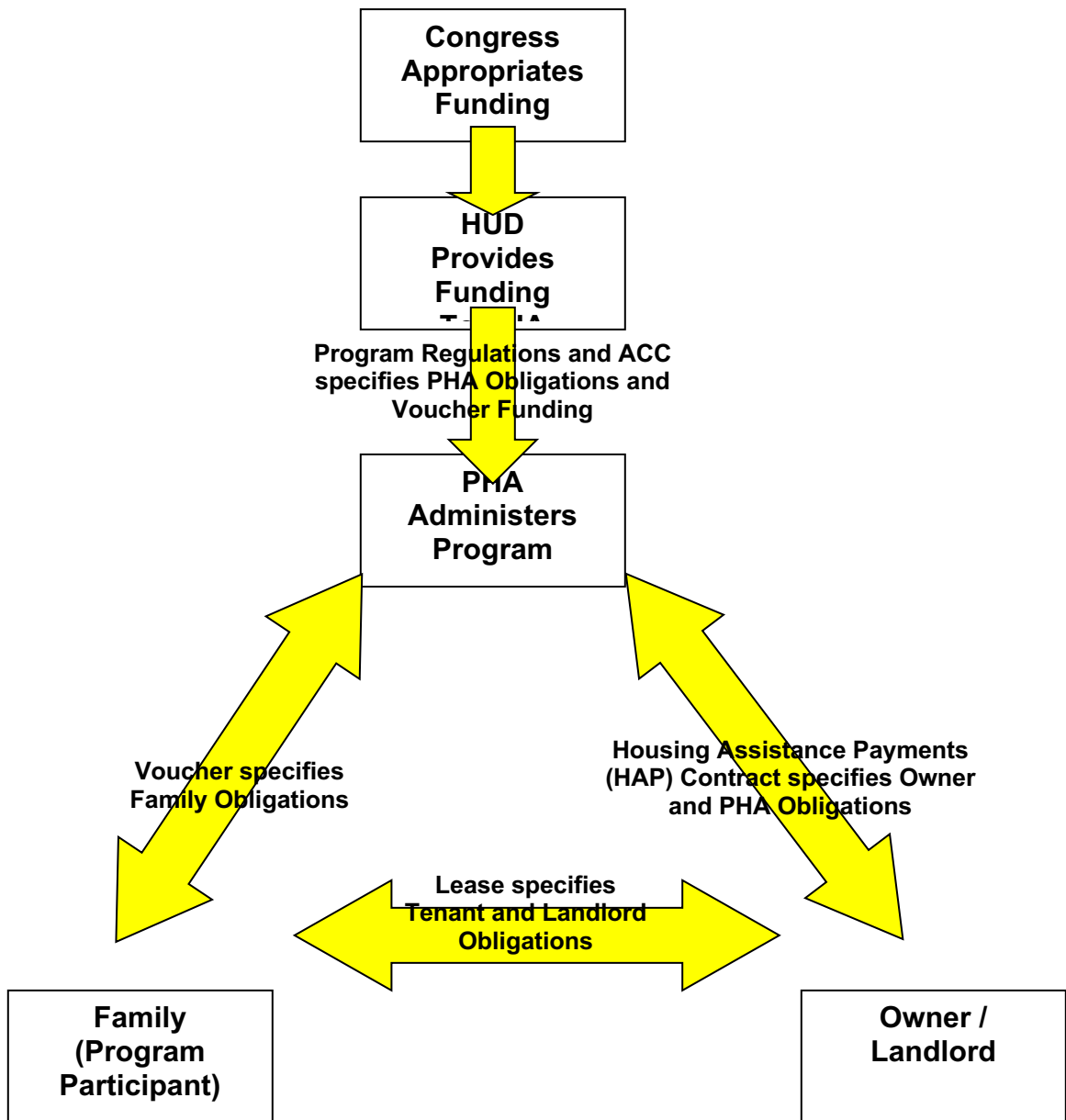
The Laurinburg Housing Authority provides housing assistance to qualifying families in the Laurinburg/Scotland County area. Participants who receive vouchers search for their own housing, which may include single-family homes, townhomes, and apartments. The voucher is portable anywhere in the United States after the family resides in the jurisdiction of the Laurinburg Housing Authority for a period of 12 months provided that funding is available and the family is in good standing with the landlord and the Authority. Provided the housing selected meets the requirements of the program, the housing subsidy is paid to the landlord directly by the Housing Authority on behalf of the family.

Project-based vouchers are tied to a specific unit. The Housing Authority enters into an assistance contract with the landlord for specified units and for a specified term. The Housing Authority refers families from the waiting list to the property manager or landlord to fill vacancies. Because the assistance is tied to the unit, a family who moves from the project-based unit will not have any right for continued assistance. However, if a family chooses to move out of a project-based unit after 12-months, then they may be eligible for a Housing Choice Voucher. The family will be placed on the Mobility Waiting List provided that they are in good standing and funding is available.

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

The Housing Choice Voucher Program is a joint effort that requires effective partnerships with the U.S. Department of Housing and Urban Development, independent property owners, Laurinburg Housing Authority Commissioners and staff, and our customers. Each partner has specific responsibilities, which must be fulfilled if the program is to be successful. The responsibilities of all partners are outlined throughout the Administrative Plan.

#### The HCV Relationships:



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## **What Does HUD Do?**

HUD has the following major responsibilities:

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

## **What Does the PHA Do?**

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

- Establish local policies to administer the program;
- Review applications from interested applicants to determine whether they are eligible for the program;
- Maintain a waiting list and select families for admission;
- Issue vouchers to eligible families and provide information on how to lease a unit;
- Conduct outreach to owners, with special attention to owners outside areas of poverty or minority concentration;
- Approve the rental unit (including assuring compliance with housing quality standards and rent reasonableness), the owner, and the tenancy;
- Make housing assistance payments to the owner in a timely manner;
- Recertify families for continued eligibility under the program;
- Ensure that owners and families comply with their contractual obligations;
- Provide families and owners with prompt, professional service;
- Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the Annual Contributions Contract, HUD-approved applications for funding, the PHA's administrative plan, and other applicable federal, state and local laws.

## **What Does the Family Do?**

The family has the following responsibilities:

- Provide the PHA with complete and accurate information as determined by the PHA to be necessary for administration of the program;
- Make their best and most timely efforts to locate qualified and suitable housing;

- Attend all appointments scheduled by the PHA;
- Allow the PHA to inspect the unit at reasonable times and after reasonable notice;
- Take responsibility for care of the housing unit, including any violations of housing quality standards caused by the family;
- Comply with the terms of the lease with the owner;
- Comply with the family obligations of the voucher;
- Not commit serious or repeated violations of the lease;
- Not engage in drug-related or violent criminal activity;
- Notify the PHA and the owner before moving or terminating the lease;
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit, assign the lease, or have any interest in the unit;
- Promptly notify the PHA of any changes in family composition;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

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

The U.S. Department of Housing and Urban Development (HUD) determines the rules and regulations for the Section 8 Housing Choice Voucher Program and other programs covered by this Administrative Plan. Applicable regulations include but are not limited to:

- ❖ 24 CFR Part 5: General Requirements
- ❖ 24 CFR Part 8: Nondiscrimination
- ❖ 24 CFR Part 35: Lead-Based Paint
- ❖ 24 CFR Part 100: The Fair Housing Act
- ❖ 24 CFR Part 982: Section 8 Tenant-Based Assistance Housing Choice Voucher Program
- ❖ 24 CFR Part 983: Section 8 Project-Based Vouchers
- ❖ 24 CFR Part 985: The Section 8 Management Assessment Program (SEMAP)

The Housing Authority will adhere to all applicable state and local laws or ordinances and any legislation designed to protect individual rights of tenants, applicants, or staff.

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

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

The purpose of the Administrative Plan is to establish policies for carrying out the program in a manner consistent with HUD requirements and local goals and objectives contained in the Housing Authority's agency plan. This Administrative Plan is required by HUD and is a supporting document to the agency plan. It is designed to provide information to users in all areas of operation.

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

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

Administration of the HCV program and the functions and responsibilities of Housing Authority staff shall comply with the Authority's personnel policy and HUD's Section 8 regulations as well as federal, state and local fair housing laws and regulations.

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

In accordance with HUD regulations, the Administrative Plan will address the following subjects:

- ❖ Selection and admission of applicants from the waiting list, including any admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the waiting list;
- ❖ Issuing or denying vouchers, including the policy governing the voucher term and any extensions or suspensions of the voucher term. Suspension means stopping the clock on the term of a family's voucher after the family submits a request for approval of tenancy.
- ❖ Occupancy policies, including definitions of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553;
- ❖ Encouraging participation by owners of suitable units located outside areas of low-income or minority concentration;
- ❖ Assisting a family with claims that illegal discrimination has prevented the family from leasing a suitable unit;
- ❖ Providing information about a family to prospective owners;
- ❖ Disapproval of owners;
- ❖ Subsidy standards;
- ❖ Family absence from the dwelling unit;
- ❖ How to determine who remains in the program if a family breaks up;
- ❖ Information review procedures for applicants;
- ❖ Informal hearing procedures for participants;
- ❖ The process for establishing and revising voucher payment standards;
- ❖ The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract);
- ❖ Special policies concerning special housing types in the program;
- ❖ Policies concerning payment by a family to the PHA of amounts the family owes the Housing Authority;
- ❖ Interim redeterminations of family income and composition;
- ❖ Restrictions, if any, on the number of moves by a participant family;

- ❖ Approval of the Board of Commissioners or other authorized officials to charge the Administrative Fee Reserve;
- ❖ Procedural guidelines and performance standards for conducting required housing quality standards inspections; and
- ❖ Housing Authority screening of applicants for family behavior or suitability for tenancy.

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

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

### **1-III.C. UPDATING AND REVISING THE PLAN**

The Housing Authority will revise this Administrative Plan as needed to comply with changes in HUD regulations. The Board of Commissioners is responsible for approving the plan and all subsequent plan changes. A copy of the Administrative Plan and subsequent changes will be provided to HUD. The Executive Director, as the duly authorized Housing Authority official, is responsible for implementing the Administrative Plan.

The Laurinburg Housing Authority will review and update the plan as needed, to reflect changes in regulations, Housing Authority operations, and to ensure staff consistency in operation. The Executive Director, as the Housing Authority official, may approve the Plan for changes. Certain changes such as approval of a new service area or activity, or decisions where HUD requires Board approval will be taken back to the Board of Commissioners.



## CHAPTER 2: FAIR HOUSING AND EQUAL OPPORTUNITY

### INTRODUCTION

The Laurinburg Housing Authority is committed to affirmatively furthering civil rights and fair housing in all of its programs. The responsibility to further nondiscrimination pertains to all areas of the Housing Choice Voucher (HCV) operations. This chapter is designed to explain the laws and HUD regulations that the Housing Authority must comply with. The letter and spirit of these laws are implemented through consistent policy and processes.

This chapter describes HUD regulations and Housing Authority policies related to these topics in three (3) parts:

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

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

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of the PHA to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons published January 22, 2007, in the *Federal Register*.

### PART I: NONDISCRIMINATION

#### 2-I.A. OVERVIEW

Federal laws require the Housing Authority to treat all applicants and participants equally, providing the same quality of service, regardless of family characteristics and background. The Housing Authority will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations and other requirements governing fair housing and equal opportunity in housing and employment, including:

- ❖ Title VI of the Civil Rights Act of 1964;
- ❖ Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988);
- ❖ Executive Orders 11063 and 13988
- ❖ Section 504 of the Rehabilitation Act of 1973;
- ❖ The Age Discrimination Act of 1975;
- ❖ Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern);
- ❖ Violence Against Women Reauthorization Act 2013 (“VAWA”); and
- ❖ The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the Federal Register, February 3, 2012.

When more than one civil rights law applies to a situation, the laws will be read and applied together. Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff may subsequently be enacted.

It is the policy of the Laurinburg Housing Authority is to comply fully with all federal, state and local non-discrimination laws; the Americans with Disabilities Act; and the U.S. Department of Housing and Urban Development regulations governing Fair Housing and Equal Opportunity. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, victims of domestic violence, and marital status.

Specifically, the Housing Authority will not discriminate based on race, color, religion, sex, disability, familial status, or national origin. LHA will not deny any family or individual the opportunity to apply for or receive assistance under HUD's Section 8 Programs, within the requirements and regulations of HUD and other regulatory authorities. To further its commitment to full compliance with applicable civil rights laws, LHA will provide access to information to Section 8 participants regarding "discrimination." This subject will be discussed during the orientation session and any complaints will be documented and made part of the applicant/participant file. LHA will comply with HUD's requirement of Affirmatively Furthering Fair Housing.

The Housing Authority is not permitted to inquire about the nature or extent of a person's disability [24 CFR §100.202 (c)]. The Housing Authority may not inquire about a person's diagnosis or details of treatment for a disability or mental condition. If the Housing Authority receives a verification document that provides such information, the Housing Authority will not place this information in the tenant file.

The above-cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are people with disabilities:

- ❖ Inquiry into an applicant's ability to meet the requirements of tenancy;
- ❖ Inquiry to determine whether an applicant is qualified for a dwelling that is accessible; or
- ❖ Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

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

Federal regulations prohibit discrimination against certain protected classes. LHA shall not discriminate because of race, color, sex, religion, familial status, age, disability, marital status, gender identity, sexual orientation, or national origin. Familial status includes children under the age of 18 living with parents or legal **custodians**, pregnant women, and people securing custody of children under the age of 18. LHA will not use any of these factors to:

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

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

The Laurinburg Housing Authority will take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the orientation process, LHA will provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR 982.301]. The Housing Assistance Payments (“HAP”) contract informs owners of the requirement not to discriminate against any person because they are members of protected classes in connection with the contract.

In order to affirmatively further fair housing, LHA will:

- 1) Provide all voucher recipients the HUD Fair Housing Guide that outlines the Fair Housing Act, protection available to persons with disabilities, and how to file a complaint;
- 2) Display the Equal Housing Opportunity posters and posters that describe fair housing law and how to file a complaint; and
- 3) Provide all applicants and voucher recipients’ information on how to file a fair housing complaint, including the provision of the toll-free number for the Fair Housing Complaint Hotline: 1-800-669-9777. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 1-800-927-9275.

### **Discrimination Complaints**

If an applicant or participant believes that a property owner has discriminated against any family member, the family should advise the Section 8 Housing Director. If the discrimination is because of the action of an employee of the Housing Authority, the Executive Director should be informed. The Laurinburg Housing Authority will make every attempt to determine whether the applicant or participant’s assertions have merit and will take any warranted corrective action. In accordance with the requirements as outlined in 24 CFR 982.304 the Housing Authority will provide the applicant or participant with information about how to file a discrimination complaint.

Applicants or participants who believe that they have been subject to unlawful discrimination may notify the LHA either orally or in writing. Within 10 business days of receiving the complaint, LHA will provide a written notice to those alleged to have violated the rule. LHA 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).

LHA 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 LHA's investigation, LHA 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. A record of all complaints, investigations, notices, and corrective actions will be maintained in accordance with the regulations set forth in Chapter 16 of this Administrative Plan.

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

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

According to 24 CFR Parts 1, 8 and 100, persons with disabilities must be afforded opportunities equal to that afforded others. In order to carry this out, LHA will inquire of all families whether anyone in the family needs an accommodation. One type of disability discrimination by the Fair Housing Act and Section 504 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 will ask all applicants and participants if they require any type of accommodations on the intake application, reexamination documents, and notices of adverse action by LHA, by including the following language:

“If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact the Section 8 Director of the Laurinburg Housing Authority, 910-276-2582, ext. 227.”

### **2-II.B. DEFINITION OF REASONABLE ACCOMMODATION**

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

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an “undue financial and administrative burden” for the Housing Authority, 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 the Housing Authority’s operations.

#### **Types of Reasonable Accommodations**

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

- Permitting applications and reexaminations to be completed by mail
- Conducting home visits
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the PHA range) if the PHA determines this is necessary to enable

a person with disabilities to obtain a suitable housing unit

- Providing time extensions for locating a unit when necessary because of lack of availability of accessible units or special challenges of the family in seeking a unit
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with PHA staff

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

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice or service is needed because of a disability, LHA will treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodation under the Fair Housing Act, issued May 17, 2004].

LHA will encourage the family to make its request in writing using a Request for Reasonable Accommodation form. However, LHA will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted. Information about requesting a reasonable accommodation will be included in the HCV orientation.

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

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

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

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

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

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

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing

Act]

- The PHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The PHA will not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.
- In the event that the PHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the PHA will dispose of it. In place of the information, the PHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

Before providing an accommodation, LHA must determine that the person meets the applicable definition of a person with a disability, and that the accommodation will enhance the family's access to the PHA's programs and services. Verification policies are contained in Chapter 7.

## **2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION**

Consistent with the joint statement of the Departments of HUD and Justice relating to reasonable accommodations under the Fair Housing Act, LHA will 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; and
- ❖ The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden or fundamentally alter the nature of LHA's HCV operations.

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

If the PHA denies the request for an accommodation because there is no relationship or nexus found between the disability and the requested accommodation, the notice will inform the family of their right to appeal the PHA's decision through an informal review or informal hearing or informal review as applicable (see Chapter 16)

If the accommodation request is denied because it is not reasonable, LHA 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 LHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, LHA 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.

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

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

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

To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display / teletype) communication will be available. To meet the needs of persons with vision impairments, large-print and audio versions of key program documents will be made available upon request. One-on-one assistance will be provided when requested.

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

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

The PHA must comply with a variety of regulations pertaining to physical accessibility, including the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In order to determine the level of access needed by LEP persons, the LHA will balance the following four factors:

- (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the Housing Choice Voucher program;
- (2) The frequency with which LEP persons encounter the program;
- (3) The nature and importance of the program, activity, or service provided by the



program to people's lives; and

(4) The resources available to the PHA and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the PHA.

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

The PHA will offer competent interpretation services free of charge, upon request, to the LEP person explain housing materials and be present at all meetings. Please refer to the LEP Plan of the Laurinburg Housing Authority for additional guidance.

The PHA will utilize a language line for telephone interpreter services.

When exercising the option to conduct remote briefings, informal reviews, or hearings, however, the PHA will coordinate with a remote interpretation service which, when available, uses video conferencing technology rather than voice-only interpretation.

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the PHA. The PHA, at its discretion, may choose to use the language services even when LEP persons desire to use an interpreter of their choosing. The interpreter may be a family member or friend. If the interpreter chosen by the family is a minor, the PHA will not rely on the minor to serve as the interpreter.

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

Where feasible and possible, according to its LEP policy, the PHA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents.

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

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

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

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

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

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

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

The phrase “physical or mental impairment” includes:

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

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

“Has a record of such impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major 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 treated by a public entity as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The definition of a person with disabilities does not include:

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

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

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

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

## CHAPTER 3: ELIGIBILITY

### INTRODUCTION

The PHA is responsible for ensuring that every individual and family admitted to the HCV program meets all program eligibility requirements. This includes any individual approved to join the family after the family has been admitted to the program. The family must provide any information needed by the 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 status of family members.
  - Provide social security number information for household members as required.
  - Consent to the PHA's collection and use of family information as provided for in PHA-provided consent forms.
  - Not currently be receiving a duplicative subsidy.
- 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. This part contains HUD and PHA definitions of family and household members and explains initial and ongoing eligibility issues related to these members.

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

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

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

#### 3-I.A. OVERVIEW

There are four factors that **must** be considered when determining eligibility for the Housing Choice Voucher Program (Family eligibility requirements, income limits, student status, and citizenship status). Additional screenings are also required that may result in denial of assistance. These screenings include criminal background, a search of the sex offender registry and screenings performed in HUD's Enterprise Income Verification System. Some eligibility criteria and program rules vary depending upon the composition of the family requesting assistance. This part provides information that is needed to correctly identify family and household members and to determine whether each household member and the family as a whole

are eligible for admission to the program. The PHA must verify all eligibility-related information as discussed in Chapter 7 (Verifications).

### **3-I.B. FAMILY AND HOUSEHOLD [24 CFR 982.201(c); FR Notice 02/03/12; Notice PIH 2014-20]**

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

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

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

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

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

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

#### **Family Breakup [24 CFR 982.315; Notice PIH 2017-08]**

LHA has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up except under the following conditions:

- Sexual assault, or stalking, the PHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, and stalking, see section 16-IX.D of this plan.)
- 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.

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

If a family breaks up and the conditions described above do not exist, LHA will consider the following factors to determine which of the families will continue to be assisted:

- ❖ Which of the two new family units has custody of dependent children;
- ❖ Which family member was the head of household when the voucher was initially issued (listed on the initial application);
- ❖ The composition of the new family units and which unit includes elderly or disabled members;
- ❖ Which family members remain in the unit; and
- ❖ Recommendations of social service professionals.

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

**Family Break Up – Waiting List:** 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. The criteria set forth above will be taken into consideration when determining which family will retain the original application date.

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

The HUD definition of family includes the *remaining member of a tenant family*, which is a member of an assisted family who remains in the unit when other members of the family have left the unit. To be considered the remaining member of the tenant family, the person must have been previously approved and be a member of the household as shown in the tenant file and lease. A live-in aide, by definition, is not a member of the household and will not be considered a remaining member of the family.

If dependents are remaining members of a tenant family, and there is no family member able to assume the responsibilities of the head of household, the minor may be eligible to receive assistance. For a minor child to receive assistance as a remaining family member the Court has to have awarded emancipated minor status to the minor; or verification must be obtained from Social Services and/or the Juvenile Court System documenting that another adult is being brought into the assisted unit to care for the child or children for an indefinite period. A reduction in family size may require a reduction in the voucher family unit size.

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

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

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

### **3-I.E. SPOUSE, COHEAD, AND OTHER ADULT**

This section specifies who may be considered a spouse, co-head, or other adult. A family may have a spouse or co-head, but not both [HUD-50058 IB, p. 13]. HUD guidance states that *spouse* means the marriage partner of the head of household.

Spouse refers to the marriage partner, either a husband or wife, who is someone you need to divorce in order to dissolve the relationship. The term “spouse” does not cover boyfriends, girlfriends, or significant others who are not marriage partners.

The term *co-head* is used by HUD to identify a family member 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 have only 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.

A *minor* who is emancipated under state law may be designated as head of household, spouse, or co-head.

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

A *dependent* is a family member who is under 18 years of age or a person of 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, co-head, foster children/adults, and live-in aides.

An unborn child shall not be considered a dependent. A child temporarily absent from the home due to placement in foster care must be considered in determining family composition and size.

A family that consists of a pregnant woman only, and no other persons, must be treated as a two-person family [(24CFR 982.402(b)(5)].

A *youth* is someone who is at least 18 years old and not more than 21 years old who left foster care at 16 years old or older and who lack adequate housing

### **Joint Custody of Dependents**

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, LHA will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

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

A full-time student is a person who is attending school or vocational training on a full-time basis. The educational institution defines the time commitment or subject load that is needed to be full-time. The educational institution must supply verification. Identifying each full-time student is important because (1) each family member that is a full-time student, other than the head, spouse, or co-head, qualifies the family for a dependent deduction and (2) the income of the full-time student is treated differently from the income of other family members.

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

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

An *elderly family* is one in which the head, spouse, co-head, or sole member is at least 62 years of age or a disabled person, and may include two or more elderly, disabled persons living together, or one or more such persons living with a live-in aide who is determined to be essential to his or her care and well-being. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6.

A *near-elderly* family is a family whose head, spouse, co-head, or sole member is at least 50 years of age but below the age of 62; or two or more persons, each of whom are between the ages of 50 and 62, living together; or one or more persons who are between the ages of 50 and 62 living with a live-in aide.

### **3-I.I. 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 cohead is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

As discussed in Chapter 2, 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 cohead is a person with disabilities. Identifying disabled families is important because these families qualify for the disabled family allowance as described in Chapter 6.

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

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

A *remaining member of a tenant family*, which is a family member of an assisted tenant family who remains in the unit when other members of the family have left the unit.



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

A *guest* is a person temporarily staying in the assisted unit with the consent of a member of the household who has express or implied authority to so consent. A guest can remain in the assisted unit no longer than 14 consecutive days during any 12-month period.

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges that are not included as a family member because they live outside of the assisted household more than 50 percent of the time are not subject to the time limitations of guests as described above.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure is expected to last 15 consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

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

*Foster adults* are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone [24 CFR 5.609]. The term *foster child* is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.

Foster children and foster adults that are living with an applicant or assisted family are considered household members but not family members. The income of foster children/adults is not counted in family annual income and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603 and HUD-50058 IB, p.13]. A foster child or foster adult may be allowed, with the approval of the Housing Authority, to reside in the unit if their presence would not result in a violation of HQS space standards in accordance with 24 CFR 982.401.

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

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

The family must supply any information or certification requested by the Laurinburg Housing Authority to verify that the family is living in the unit, or relating to family absence from the unit, including any Laurinburg Housing Authority requested information or certification on the purposes of family absences. The family must cooperate with the Laurinburg Housing Authority for this purpose. The family must promptly notify the Laurinburg Housing Authority of its absence from the unit.

No member of the family may be absent from the unit for more than 14 days. The family must request approval from the Laurinburg Housing Authority for absences exceeding 14 days. The Laurinburg Housing Authority will make a determination within five (5) business days of the request. An authorized absence may not exceed 180 days. Any family absent for more than 14 days without authorization will be terminated from the program.

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

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

Children temporarily absent from the home because of placement in foster care are considered members of the family. If a child has been placed in foster care, the Housing Authority will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that 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, co-head, or spouse absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

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

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

The Laurinburg Housing Authority will request verification of the family member's permanent absence from a responsible medical professional. If the responsible medical professional cannot provide a determination, the person will be considered temporarily absent. If the family certifies that the family member is confined on a permanent basis, they may present, and the Housing Authority will consider, any additional documentation or evidence.

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

The family must request Housing Authority approval for the return of any adult family members that the PHA previously determined to be permanently absent. The individual is subject to all eligibility and screening requirements.

## **3-I.M. LIVE-IN AIDE [24 CFR 5.403]**

A family may request Housing Authority approval for the household to include a live-in aide when necessary to provide supportive services for a family member who is elderly, near elderly or a person with disabilities. This section describes the conditions under which someone can be considered a live-in aide, and the situations in which the PHA may deny or withdraw approval of a particular individual as a live-in aide.

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 caseworker, that the live-in aide is essential for the care and well-being of the elderly, near elderly or disabled family member. 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.

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

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

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

#### **Income Limits**

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

#### **Types of Low-Income Families**

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

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

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

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

Income limits are used for eligibility. Income eligibility is determined at time of application and re-evaluated prior to admission. Income eligibility is determined by comparing the annual income of an applicant to the applicable income limit for their family size. In order to be income eligible, an applicant family must be one of the following:

- ❖ A very low-income family;
- ❖ A low-income family continuously assisted under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR 982.4; 24 CFR 982.201(b)].
  - The LHA will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time they were selected from the LHA waiting list.

- ❖ A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173
- ❖ A low-income family or moderate-income family that is displaced because of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing.

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

In accordance with HUD requirements, at least 75 percent of the families admitted to the Housing Choice Voucher program during the Housing Authority's fiscal year must be extremely low-income families.

HUD may approve exceptions to this requirement if the PHA demonstrates that it has made all required efforts, but has been unable to attract an adequate number of qualified extremely low-income families.

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 counted for income targeting purposes.

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

### **Overview**

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

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

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

Prior to being admitted, or at the first reexamination, all citizens and nationals will be required to sign a declaration under penalty of perjury and will be required to show proof of their status by such means as a Social Security card, birth certificate, military ID or military DD 214 Form. All eligible noncitizens who are 62 years of age or older will be required to sign a declaration under penalty of perjury. They will also be required to show proof of age.

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

All eligible noncitizens must sign a declaration of their status, a verification consent form, and provide their original INS documentation. The Laurinburg Housing Authority will make a copy of the individual's INS documentation and place the copy in the file. The Housing Authority will also verify their status through the INS SAVE system. If the INS SAVE system cannot

confirm eligibility, the Housing Authority will mail information to the INS so a manual check can be made of the INS records.

Family members who do not claim to be citizens, nationals or eligible noncitizens, or whose status cannot be confirmed, must be listed on a statement of non-eligible members and the head of the household must sign the list.

Noncitizen students on student visas, though in the country legally, are not eligible to be admitted to the Section 8 Program.

Any family member who does not choose to declare their status must be listed on the statement of non-eligible members.

If no family member is determined to be eligible under this Section, the family's admission will be denied.

The family's assistance will not be denied, delayed, reduced or terminated because of a delay in the process of determining eligible status under this Section, except to the extent that the delay is caused by the family.

If the Laurinburg Housing Authority determines that a family member has knowingly permitted an ineligible noncitizen (other than any ineligible noncitizens listed on the lease) to permanently reside in their Section 8 unit, the family's assistance will be terminated. Such family will not be eligible to be readmitted to Section 8 for a period of 24 months from the date of termination.

### ***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 as described in Chapter 7. The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

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

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

### **Mixed Families**

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 Housing Authority will prorate the assistance provided to a mixed family. The Housing Authority will first determine assistance as if all family members were eligible and then prorate the assistance based on the percentage of family members that actually are eligible. For example, if the subsidy for a family is calculated at \$400 and two of four members are ineligible, the subsidy would be reduced to \$200.

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

A PHA may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member [24 CFR 5.512(b)]. Otherwise, no individual or family may be assisted prior to the affirmative establishment by the 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 have submitted documentation to the PHA in accordance with program requirements [24 CFR 5.512(a)].

The LHA will not provide assistance to a family before the verification of at least one family member.

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

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

Informal hearing procedures are contained in Chapter 16.

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

For new occupants joining the assisted family, the 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.

To simplify and streamline the eligibility process, the Laurinburg Housing Authority will verify the citizenship status at the time all other eligibility factors are verified.

### **3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216, 5.218, 5.512 (d) (3). And 5.514 (d) Notice PIH 2012-10]**

Applicants and program participants are required to disclose and document the Social Security Numbers (SSNs) of all family members as a condition of admission and continued assistance, except ineligible noncitizens. (See Section 3-II-B). This process occurs only one time for each family member, unless a family member has been issued a new SSN or the Social Security Administration has determined that a previously disclosed SSN was invalid.

Disclosure and documentation of SSNs is a condition of eligibility for the voucher program. An applicant family **cannot** be admitted to the program until the requirement is met. An extension of time may be allowed to meet this obligation at the intake stage, however, failure to disclose and document SSNs as required will ultimately result in family's application being denied. Applicant families that are otherwise eligible for the program but are awaiting SSN documentation may retain their place on the waiting list but may not be admitted until documentation of a valid SSN is submitted to the Housing Authority.

If an applicant family adds a child under six years of age to their household within six months of voucher issuance, the family may be admitted to the program before the SSN documentation is submitted. The family has 90 days from the date of admission, which is the HAP contract effective date, to provide the required documentation to the Housing Authority. One additional 90-day extension period will be granted if the applicant family experienced delays that were out of its control (24 CFR 5.216(h)(d); PIH Notice 2016-05).

#### **SSN Disclosure Requirements for New Household Members Added to a Participant**

**Household:** To add a new household member **over six years of age** or to add a new member who is six years of age and who already has a SSN, the family **must** disclose and document the new member's SSN before adding the new member to the assisted household. This information must be disclosed prior to adding the new member to the assisted household unless the individual being added is a non-contending family member.

When adding a new household member who is **under the age of six** who does not have a SSN, the participant must disclose and document the SSN for the new member within **90** days of the child's addition to the household. An extension of 90 days may be granted if the failure to provide the required documentation is beyond the family's control. The Housing Authority **must** add the child to the assisted household pending submission of the SSN, and the family must receive all associated benefits and deductions. An alternate ID must be used when submitting the child's information to IMS/PIC, but a corrected report must be submitted once the SSN number is received.

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

HUD requires each adult family member, and the head of household, spouse, or co-head, regardless of age, to sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, the form 52675 Debts Owed to Public Housing Agencies and Terminations and other consent forms as needed to collect information relevant to the family's eligibility and level of

assistance. Admission to the program will be denied if any member of the applicant family fails to sign and submit consent forms for obtaining information in accordance with 24 CFR 5, Subparts B and F [24 CFR 982.552(b)(3)].

A consent form must be completed whenever a new adult joins an HCV household. Whenever a current household member turns 18 years of age, they will not be required to sign a consent form until the family's annual appointment unless they are earning income, which would require them to report their income within 30 days of turning 18.

### **3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR 5.612 and FR Notice 4/10/06, FR Notice 9/21/16]**

Section 327 of Public Law 109-115 established new restrictions on the eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education. Students are considered eligible if the following criteria is met:

- ❖ Is 24 years of age or older;
- ❖ Is a veteran;
- ❖ Has a dependent child;
- ❖ Has dependents;
- ❖ Is married;
- ❖ Is a person with disabilities who was receiving HCV assistance as of November 30, 2005; or
- ❖ Is an independent student as defined below:
  - Parent's income is not over the "low" income level (for the area that the parent's live) and the student is income eligible;
  - Meet the U.S. Department of Education definition of an "independent student;"
  - Has maintained a household separate from parents for a full year and not claimed on their parents' tax returns.

If the applicant is under the age of 24 and everyone in the household is a full-time student, and if none of the above criteria applies, the applicant is ineligible.

#### ***Dependent Child***

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

#### ***Independent Student***

The April 10, 2006, *Federal Register* notice "Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance" provides suggested criteria for determining a student's independence from their parents. On September 21, 2016,



HUD issued the *Federal Register* notice “Eligibility of Students for Assisted Housing under Section 8 of the U.S. Housing Act of 1937; Additional Supplementary Guidance,” updating previous guidance on what constitutes an *independent student*.

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

- ❖ The individual is of legal contract age under state law.
- ❖ The individual has established a household separate from their parents for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education’s definition of independent student.

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

- ❖ The individual is at least 24 years old by December 31 of the award year for which aid is sought
- ❖ 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 is a veteran of the U.S. Armed Forces or is currently serving on active duty in the Armed Forces for other than training purposes
- ❖ The individual is a graduate or professional student
- ❖ The individual is married
- ❖ The individual has one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)
- ❖ 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, or a financial aid administrator
- ❖ The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances
- ❖ The individual was not claimed as a dependent by their parents pursuant to IRS regulations, as demonstrated on the parents’ most recent tax forms.
- ❖ The individual provides a certification of the amount of financial assistance that will be provided by their parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

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.

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

### ***Institution of Higher Education***

The Housing Authority will use the statutory definition of *institution of higher education* as contained in section 102 of the Higher Education Act of 1965.

### ***Parents***

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

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

The 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* (see Exhibit 3-1).

### ***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, or a financial aid administrator.

### **Determining Student Eligibility**

For any student who is subject to the CFR 5.612 restrictions, the Housing Authority 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 their 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 Housing Authority determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, the Housing Authority will send a notice of denial in accordance with the policies in Section 3-III.F, and the applicant family will have the right to request an informal review in accordance with the policies in Section 16-III.B.

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

If the Housing Authority determines that a student is not independent from his parents, the Housing Authority must determine the income eligibility of the student's parents. The following guidelines will be used to determine the income eligibility of the student's parents:

- ❖ If the student's parents are married and living together, the PHA will obtain a joint income declaration and certification of joint income from both 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 of income from each parent.
- ❖ If the student has been living with one of their parents and has not had contact with or does not know where to contact their 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 then obtain an income declaration and certification of income from the parent with whom the student has been living or had contact.

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

## **3-II.F. EIV SYSTEMS SEARCHES [NOTICE PIH 2018-18; EIV FAQs; EIV SYSTEM TRAINING 9/30/2020**

### **Exiting Tenant Search**

Prior to admission to the program, the PHA must search for all household members using the EIV Existing Tenant Search module. The PHA must review the reports for any SSA matches involving another PHA or multifamily entity and follow up on any issues identified. The PHA must provide the family with a copy of the Existing Tenant Search if requested. At no time may any family member receive duplicative assistance.

If the tenant is a new admission to the PHA, and a match is identified at a multifamily property, the PHA must report the program admission date to the multifamily property and document the notification in the tenant file. The family must provide documentation of the move out from the assisted unit as applicable.

The PHA will contact the PHA or owner identified in the report to confirm that the family has moved out of the unit and obtain documentation of current tenancy status, including a form

HUD-50058 or form HUD-50059 as applicable, showing an End of Participation. The PHA will only approve assistance contingent upon move-out from currently occupied assisted unit.

### **Debts Owed to PHAs and Terminations**

All adult household members must sign the form HUD-52675 Debts Owed to Public Housing and Terminations. Prior to admission to the program the PHA must search for each adult family member in the Debts Owed to PHAs and Terminations module.

If a current or former tenant disputes the information in the module, the tenant should contact the PHA directly in writing to dispute the information and provide any documentation that supports the dispute. If the PHA determines that the disputed information is incorrect, the PHA will update or delete the record from EIV. Former tenants may dispute debt and termination for a period of up to three years from the End of Participation date in the program.

The PHA will require each adult family member to sign the form HUD-52675 once at the eligibility determination. Any new members added to the household after admission will be required to sign form HUD-52675 prior to being added to the household.

The PHA will search the Debts Owed and Terminations module as part of the eligibility determination for new households and as part of the screening process for any household members added after the household is admitted to the program. If any information on debts or terminations is returned by the search, the PHA will determine if this information warrants a denial in accordance with policies in part III of this chapter.

### **Income and Income Validation Tool (IVT) Reports**

For each new admission, the PHA is required to review the EIV Income and IVT reports to confirm and validate family reported income within 120 days of the IMS/PIC submission date of the new submission. The PHA must print and maintain copies of the EIV Income and IVT reports in the tenant file and resolve any discrepancies with the family within 60 days of the EIV Income and IVT report dates.

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

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

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied assistance. In addition, HUD requires or permits the Housing Authority to deny assistance based on certain types of current or past behavior of family members. If any applicant deliberately misrepresents the information on which eligibility or tenant rent is established, the Laurinburg Housing Authority will deny assistance and may refer the family file/record to the proper authorities for appropriate disposition.

In this section we will discuss other situations and circumstances in which denial of assistance is mandatory for the PHA, and those in which denial of assistance is optional for the PHA.

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

Denial of assistance includes any of the following:

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

### **Prohibited Reasons for Denial of Assistance [24 CFR 982.202(b), 24 CFR 5.2005(b)]**

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

- ❖ Age, disability, race, color, religion, sex, gender identify, marital status, or nation 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 are restrictions on the family's ability to move outside of the jurisdiction of the Laurinburg Housing Authority (further discussion and guidance can be found in Chapter 10, Portability)
- ❖ Whether member of the family are unwed parents, recipients of public assistance, or children born out of wedlock
- ❖ Whether the family includes children
- ❖ Whether the family decides to participate in a family self-sufficiency program
- ❖ Whether or not a qualified applicant has been a victim of domestic violence, sexual violence, dating violence, sexual assault or stalking.

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

HUD requires the Housing Authority to deny assistance in the following cases:

- ❖ If any member of the household has been evicted from federally assisted housing in the last 3 years for drug-related criminal activity, the family must be denied assistance. However, HUD permits and the Laurinburg Housing Authority will admit an otherwise-eligible family if the household member has completed a supervised drug rehabilitation program approved by the LHA or the circumstances which led to eviction no longer exist (e.g., person involved in criminal activity no longer lives in the household).
- ❖ The Housing Authority determines that any household member is currently engaged in the use of illegal drugs, including the distribution, possession, or sale. *Currently engaged in* is defined as any use of illegal drugs during the previous six months.
- ❖ The Housing Authority has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

In determining reasonable cause, the Housing Authority 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. Consideration will be given to any evidence presented from treatment providers or community-based organizations providing services to household members.

- ❖ If any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing.
- ❖ If any household member is subject to a lifetime registration requirement under a state sex offender registration program, LHA will use a nationwide database, such as [www.nsopw.gov](http://www.nsopw.gov).
- ❖ Failure to provide verification of social security number as required by HUD via HUD's Rent Reform Notice effective January 2010.

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

HUD permits, but does not require, the Housing Authority to deny assistance for the reasons discussed in this section. Whenever HUD gives the PHA discretion about denying assistance, the PHA will take into consideration the factors discussed in Section 3-III.E.

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

The Laurinburg Housing Authority will deny assistance if it is determined that any household member has been convicted for certain types of criminal activity. Certain types of criminal activity are defined below. The time period for which the family will be denied is based on the date the individual completed his or her incarceration period or probation. Applicants with pending drug-related or violent criminal charges will be permitted to apply; however, their application will be placed on hold until the charges have been resolved. If the charges are cleared or dismissed, the applicant will be placed on the waiting list based on the date and time of the original application.

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

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

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

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

*Immediate vicinity* means within a three-block radius of the premises.

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

- ❖ Any conviction for drug-related or violent criminal activity
- ❖ Records of arrests for drug-related or violent criminal activity, although a record of arrest(s) will not be used as the basis for the denial or proof that the applicant engaged in disqualifying criminal activity.
- ❖ Any record of eviction from public or privately-owned housing as a result of criminal activity
- ❖ 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 Housing Authority will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the Housing Authority 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 Housing Authority to deny assistance based on the family's previous behavior in assisted housing. The Laurinburg Housing Authority will not deny assistance to an otherwise eligible family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program. The Housing Authority will deny assistance to an applicant family if:

- ❖ The family does not provide information that 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 convicted of fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
  - ❖ The family owes rent or other amounts to any PHA in connection with Section 8 or other public housing assistance under the 1937 Act, unless the family repays the full amount of the debt prior to being selected from the waiting list.
  - ❖ If the family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being selected from the waiting list.
  - ❖ 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.
- 
- When denying admission due to family debts as shown in HUD's EIV system, the PHA will provide the family with a copy of the EIV Debt Owed to PHA and Termination report.
  - If the family wishes to dispute the information in the report, the family must contact the PHA that entered the information in EIV in writing, explaining why EIV information is disputed. The family must also provide a copy of the letter and all applicable verification to the PHA to support the family's claim. The PHA will consider the information provided by the family prior to issuing a notice of denial.

- ❖ A family member has engaged in or threatened violent or abusive behavior toward PHA personnel.
  - *Abusive or violent behavior towards Housing Authority personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.
  - *Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

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

| <b>Type of Conviction</b>                                      | <b>Automatic Exclusion Period</b> | <b>Individualized Assessment Period</b> | <b>No Exclusion After</b> |
|--|-----------------------------------|---|---------------------------|
| Nonviolent Misdemeanor (Classes 1-3)                           | No Automatic Exclusion            | 2 years                                 | >3 years                  |
| Violent Misdemeanor (Class A1 & Sex Offenses)                  | 2 years                           | >2 years                                | >3 years                  |
| Nonviolent Felony (Classes H-I)                                | No Automatic Exclusion            | 7 years                                 | >7 years                  |
| Violent Felony (Classes A-G & Sex Offenses)                    | 5 years                           | >5 years                                | >6 years                  |
| Felony Involving Sale or Manufacture of a Controlled Substance | 5 years                           | 5-10 years                              | >10 years                 |

### **3-III.D. SCREENING**

#### **Screening for Eligibility**

The Laurinburg Housing Authority is authorized to obtain criminal conviction records from law enforcement agencies to screen applications for admission to the HCV program. This authority assists the Housing Authority in complying with HUD requirements and Housing Authority 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 Housing Authority requires every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

The Housing Authority will perform a criminal background check through local law enforcement for every adult household member. If the results of the criminal background check indicate that there may be past criminal activity, but the results are inconclusive, the Housing Authority will



request a fingerprint card and will request information from the National Crime Information center (NCIC).

In accordance with Notice PIH 2012-28, issued June 11, 2012, the Laurinburg Housing Authority will use the Dru Sjodin National Sex Offender Database, an online, searchable database that combines the data from individual state sex offender registries and other national, state, or local resources. The Dru Sjodin database is available at <http://www.nsopw.gov>.

Additionally, LHA must ask whether the applicant, or any member of the applicant's household, is subject to a lifetime registered sex offender registration requirement in any state [Notice PIH 2012-28].

If LHA proposes to deny assistance based on a criminal record or information about the Lifetime Sex Offender registration, LHA must:

- notify the household of the proposed action
- provide the subject of the record and the applicant a copy of the record
- provide an opportunity to dispute the accuracy and relevance of the information prior to a denial of admission. [24 CFR 5.903(f) and 5.905(d)].

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

The Laurinburg Housing Authority has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. The Housing Authority will not conduct additional screening to determine an applicant family's suitability for tenancy; owners will be responsible for making this determination.

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

### **3-III.E. CRITERIA FOR DECIDING TO DENY ASSISTANCE**

#### **Evidence [24 CFR 982.553(c)]**

The Laurinburg Housing Authority will use the concept of the preponderance of the evidence as the standard for making all admission decisions. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole, shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

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

The Laurinburg Housing Authority will consider the following facts and circumstances 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, or (as discussed further in section 3-III.G) 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, the Housing Authority will consider 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 Housing Authority 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)]**

The Housing Authority is authorized to deny assistance unless the family agrees that a family member who participated in or was culpable for an offense will not live in the unit. As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit, stay as a guest, or reside in the assisted unit. After admission to the program, the family must present evidence of the former family member's current address upon request.

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

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

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, the Housing Authority will determine whether the behavior is related to the stated disability. If so, upon the family's request, the Housing Authority will determine whether admitting the family as a reasonable accommodation is appropriate. LHA will only consider accommodations that can reasonably be expected to address the behavior that is

the basis of the proposed denial of assistance. See Chapter 2 for a discussion of reasonable accommodation.

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

The Laurinburg Housing Authority will notify the family of the decision to deny assistance in writing within 10 business days of the determination. The notice will describe (1) the reasons for which assistance was denied (2) the family's right to an informal review; and (3) the process for obtaining the information review [24 CFR 982.554 (a)]. The denial letter will allow the applicant 10 calendar days to submit a written request an informal review.

### **3-III.G. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING**

The Violence against Women Act of 2013 (VAWA) prohibits denial of admission to an applicant who otherwise qualifies for the HCV program on the basis or as a direct result of the fact that the applicant is a victim of domestic violence, dating violence, sexual assault, or stalking [24 CFR 5.2005(b)].

#### **Notification**

VAWA 2013 expanded notification requirements to include the obligation for the Housing Authority to provide applicants who are denied assistance with a VAWA Notice of Occupancy Rights (form HUD-5380) and domestic violence certification form (HUD-5382) at the time the applicant is denied.

Laurinburg Housing Authority 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 established policies. While LHA 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 Housing Authority that their status as a victim is directly related to the grounds for the denial. LHA will request that the applicant provide enough information to allow LHA to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim. LHA will include in its notice of denial the VAWA information described in section 16-IX.C of this plan as well as including a copy of the form HUD-5382. The Housing Authority will request in writing that an applicant wishing to claim protection under VAWA notify the Housing Authority within 14 business days.

#### **Documentation**

##### ***Victim Documentation [24 CFR 5.2007]***

If an applicant claims the protection against denial of assistance that VAWA provides to victims of domestic violence, dating violence, sexual assault, or stalking, the Laurinburg Housing Authority will request in writing that the applicant provide documentation supporting the claim in accordance with section 16-IX.D of this plan.

### ***Perpetrator Documentation***

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.

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

### Person with Disabilities [24 CFR 5.403]

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

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

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

In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.
- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

#### **(A) In General**

The term “developmental disability” means a severe, chronic disability of an individual that:

- (i) is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) is manifested before the individual attains age 22;
- (iii) is likely to continue indefinitely;
- (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) Self-care, (II) Receptive and expressive language, (III) Learning, (IV) Mobility, (V) Self-direction, (VI) Capacity for independent living, (VII) Economic self-sufficiency; and
- (v) reflects the individual’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

## **(B) Infants and Young Children**

An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes their ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

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

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

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

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

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

(1) Physical or mental impairment includes:

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

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

- (3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (4) *Is regarded as having an impairment* means:
  - (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
  - (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
  - (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

**EXHIBIT 3-2: DEFINITION OF INSTITUTION OF HIGHER EDUCATION  
[20 U.S.C. 1001 and 1002]**

**Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance; Notice [Federal Register, April 10, 2006]**

*Institution of Higher Education* shall have the meaning given this term in the Higher Education Act of 1965 in 20 U.S.C. 1001 and 1002.

*Definition of ‘‘Institution of Higher Education’’ From 20 U.S.C. 1001*

- (a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ‘‘institution of higher education’’ means an educational institution in any State that
- (1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
  - (2) Is legally authorized within such State to provide a program of education beyond secondary education;
  - (3) Provides an educational program for which the institution awards a bachelor’s degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;
  - (4) Is a public or other nonprofit institution; and
  - (5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.
- (b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ‘‘institution of higher education’’ also includes—
- (1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and
  - (2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.
- (c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

*Definition of ‘‘Institution of Higher Education’’ From 20 U.S.C. 1002*

- (a) Definition of institution of higher education for purposes of student assistance programs



- (1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term “institution of higher education” for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—
  - (A) A proprietary institution of higher education (as defined in subsection (b) of this section);
  - (B) A postsecondary vocational institution (as defined in subsection (c) of this section); and
  - (C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.
- (2) Institutions outside the United States
  - (A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—
    - (i) In the case of a graduate medical school located outside the United States—
      - (I)(aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and
      - (bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or
      - (II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or
    - (ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution’s students complete their clinical training at an approved veterinary school located in the United States.
  - (B) Advisory panel

- (i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—
    - (I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and
    - (II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.
  - (ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.
- (C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.
- (D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.
- (3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—
- (A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;
  - (B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;
  - (C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or
  - (D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the

limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

- (4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—
  - (A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution’s management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or
  - (B) The institution, the institution’s owner, or the institution’s chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.
- (5) Certification. The Secretary shall certify an institution’s qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.
- (6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

- (1) Principal criteria. For the purpose of this section, the term “proprietary institution of higher education” means a school that—
  - (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
  - (B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;
  - (C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;
  - (D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;
  - (E) Has been in existence for at least 2 years; and
  - (F) Has at least 10 percent of the school’s revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of

chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.

(2) Additional institutions. The term “proprietary institution of higher education” also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) Postsecondary vocational institution.

(1) Principal criteria. For the purpose of this section, the term “postsecondary vocational institution” means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and

(C) Has been in existence for at least 2 years.

(2) Additional institutions. The term “postsecondary vocational institution” also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

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

### **INTRODUCTION**

When a family wishes to receive assistance through the Section 8 Housing Choice Voucher (HCV) program, the family must submit an application that provides the Housing Authority with the information needed to determine the family's eligibility. In accordance with HUD regulations, the Laurinburg Housing Authority places all families that apply for assistance on a waiting list. When HCV assistance becomes available, the Housing Authority selects families from the waiting list in accordance with HUD requirements and Housing Authority policies as outlined in this Administrative Plan.

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance, and that the Housing Authority affirmatively further fair housing goals in the administration of the program [24 CFR 982.53]. Adherence to the policies described in this chapter ensures that the Housing Authority will comply with all relevant fair housing requirements as described in Chapter 2.

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

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

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

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

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

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

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

#### **4-I.B. APPLYING FOR ASSISTANCE [HCV GB, pp. 4-11 – 4-16, Notice PIH 2009-36]**

Families wishing to apply for the Section 8 HCV program will be required to complete an application for housing assistance. Prospective applicants can receive an application and schedule appointments by calling the Laurinburg Housing Authority Administrative office at (910) 276-2582. The completed application will be dated and the time will be recorded at the time that the application is taken.

Applications are taken to compile a waiting list. Due to the demand for Section 8 assistance in the Laurinburg Housing Authority jurisdiction, LHA may take applications on an open enrollment basis, depending on the length of the waiting list.

When the waiting list is open, completed applications will be accepted from all applicants. The Laurinburg Housing Authority will later verify the information in the application relevant to the applicant's eligibility, admission, and level of benefit.

The application process will involve two phases. The first phase is the initial application for housing assistance. The application requires the family to provide basic information including name, address, phone number, family composition and family unit size, racial or ethnic designation of the head of household, income category, birth certificate, social security card, picture identification for members 18 years of age or older, and information establishing any preferences to which they may be entitled.

The second phase includes the information from the first phase and requires more specific details to verify assets and citizenship declaration in reference to family summary. This phase also educates the applicant on the EIV system, ethical practices to avoid fraud, VAWA, and HUD expectations for future occupancy.

Preference for housing may be established at the discretion of the Laurinburg Housing Authority. Preferences will be given to the following:

- ❖ Elderly and disabled single individuals over non-elderly and non-disabled single individuals
- ❖ Families who are displaced due to a presidentially declared natural disaster.

#### **4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS**

The Laurinburg Housing Authority will take a variety of steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard application process. This could include people with disabilities, certain elderly individuals, as well as persons with limited English proficiency (LEP). Policies related to reasonable accommodations for persons with disabilities, and people with limited English proficiency are contained in Chapter 2.

#### **4-I.D. PLACEMENT ON THE WAITING LIST**

LHA will review each complete application received and make a preliminary assessment of the family's eligibility. LHA will accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance) for the grounds stated in the regulations [24 CFR 982.206(b)(2)]. Where the family is determined to be ineligible, LHA will notify the family in writing [24 CFR 982.201(f)]. Where the family is not determined to be ineligible, the family will be placed on a waiting list of applicants.

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

##### **Ineligible for Placement on the Waiting List**

If LHA determines from the information provided by the family that a family is ineligible, the family will not be placed on the waiting list. Where a family is determined to be ineligible, the LHA will send written notification of the ineligibility determination within 10 business days of receiving a complete application. The notice will specify the reasons for ineligibility and will inform the family of its right to request an informal review and explain the process for doing so (see Chapter 16).

##### **Eligible for Placement on the Waiting List**

The LHA will send written notification of the preliminary eligibility determination within 10 business days of receiving a complete application.

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

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

### **PART II: MANAGING THE WAITING LIST**

#### **4-II.A. OVERVIEW**

The Laurinburg Housing Authority must have policies regarding various aspects of organizing and managing the waiting list of applicant families. This includes opening the list to new applications, closing the list to new applicants, notifying the public of waiting list openings and closings, updating waiting list information, purging the list of families that are no longer interested in or eligible for assistance, as well as conducting outreach to ensure a sufficient number of applications.

#### **4-II.B ORGANIZATION OF THE WAITING LIST [24 CFR 982.204 and 205]**

In accordance with 24 CFR 982.204 and 205, the waiting list will contain the following information for each applicant:

- (1) Applicant name

- (2) Family unit size
- (3) Date and time of application
- (4) Qualification of any local preference
- (5) Racial or ethnic designation of the Head of Household

The waiting list will be maintained in accordance with the following guidelines:

- (1) The application will be a permanent file and will include the date and time of application;
- (2) Applications will be placed on the waiting list and processed by date and time and preference at time of application; and
- (3) Any contact between the Laurinburg Housing Authority and the applicant will be documented in the applicant file

A separate waiting list will be maintained for each program (i.e., Section 8 HCV, RAD-PBV, and LIHTC Tax Credit).

**Note:** The waiting list cannot be maintained by bedroom size under current HUD regulations.

#### **4-II.C OPENING AND CLOSING THE WAITING LIST [24 CFR 982.206]**

##### **Closing the Waiting List**

The Laurinburg Housing Authority will close the waiting list if it is determined that the existing waiting list contains an adequate pool of applicants for use of available program funding. LHA may stop accepting applications completely or may accept only applications meeting specific criteria. Closing the waiting list will be announced via public notice. The public notice will state the date the waiting list will be closed and will be published in a local newspaper of general circulation and by any available minority media.

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

The Laurinburg Housing Authority will announce the re-opening of the waiting list via public notice. The public notice will state where, when, and how to apply. The notice will be published in a local newspaper of general circulation and by any available minority media. The public notice will state any limitations to who may apply and will including the Fair Housing logo and slogan.

#### **4-II.D FAMILY OUTREACH [HCV GB, pp. 4-2 to 4-4]**

HUD requires the Housing Authority to make certain types of outreach efforts, simply to ensure that a sufficient number of applicants are on the waiting list to use the HCV resources it has been allotted. Because HUD requires that the Housing Authority to service a specified percentage of extremely low-income families, additional outreach may be required to meet that statutory requirement.

The Laurinburg Housing Authority will monitor the characteristics of the population being served and the characteristics of the population as a whole in the Housing Authority's jurisdiction. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are being underserved. All outreach efforts will comply with fair housing requirements.



#### **4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES**

While the family is on the waiting list, the family must immediately inform the Housing Authority of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing.

#### **4-II.F. UPDATING THE WAITING LIST [24 CFR 982.204]**

An out-of-date waiting list can hamper the Housing Authority's efforts to process applicants efficiently when funding becomes available. To keep the waiting list current, the Housing Authority is permitted to contact families on the waiting list periodically to reconfirm their interest, and to "purge" the list of families that are no longer interested, no longer eligible, or no longer reachable.

##### **Purging the Waiting List**

The Laurinburg Housing Authority will update and purge its waiting list at least annually, but normally several time per year to ensure that the pool of applicants reasonably represents interested families. Purging also enables the Housing Authority to update the information regarding address, family composition, income category and preferences.

To update the waiting list, the LHA will send an update request via first class mail to each family on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program. This update request will be sent to the last address that LHA has on record for the family. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

The family's response must be in writing and may be delivered in person, by mail, by email, or by fax. Responses should be postmarked or received by the PHA not later than 15 business days from the date of the PHA letter.

If the family fails to respond within 15 business days, the family will be removed from the waiting list without further notice.

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

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 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 it is determined that the lack of response was due to PHA error, or to circumstances beyond the family's control.

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

The Laurinburg Housing Authority will not remove an applicant's name from the waiting list unless:

- ❖ The applicant requests that the name be removed;
- ❖ The applicant fails to respond to a written request for information or a request to declare their continued interest in the program or misses scheduled appointments; or

- ❖ The applicant does not meet either the eligibility or screening criteria for the program.

## **PART III: SELECTION FOR HCV ASSISTANCE**

### **4-III.A. OVERVIEW**

As vouchers become available, families on the waiting list must be selected for assistance in accordance with the policies described in this part. The Housing Authority will maintain a clear record of all information required to verify that the family is selected from the waiting list according to the selection policies established by the Housing Authority [24 CFR 982.204(b) and 982.207(e)].

### **4-III.B. SELECTION AND HCV FUNDING SOURCES**

#### **Regular HCV Funding**

Regular HCV funding may be used to assist any eligible family on the waiting list.

### **4-III.C. SELECTION METHOD**

#### **Local Preferences [24 CFR 982.207; HCV p. 4-16]**

The Laurinburg Housing Authority is permitted; but not required, to establish local preferences. The Housing Authority will give preference to the following:

- ❖ Elderly and disabled single individuals over non-elderly and non-disabled single individuals;
- ❖ Families who are displaced due to a Presidentially-declared natural disaster.

#### **Income Targeting Requirement [24 CFR 982.201(b)(2)]**

Seventy-five (75%) percent of new admissions must be families whose incomes are at or below the extremely low-income limit. The Laurinburg Housing Authority will monitor progress in meeting the income-targeting requirement throughout the fiscal year. Extremely low-income families will be selected ahead of other eligible families on an as-needed basis to ensure the income-targeting requirement is met.

#### **Order of Selection**

The date and time of application and preference will be utilized to determine the sequence within the above-prescribed preferences.

### **4-III.D. NOTIFICATION OF SELECTION AND BRIEFING [24 CFR 982.554(a)]**

When the Laurinburg Housing Authority selects a family from the waiting list, the family **must** attend a briefing explaining how the program works and will receive an information packet which outlines HCV program requirements. If they cannot attend the originally scheduled briefing, they may attend a later session. If the family fails to attend three briefings without good cause, they will be denied a voucher and the application status will be marked as inactive.

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

#### **4-III.E. THE APPLICATION INTERVIEW**

Families selected from the waiting list are required to participate in an eligibility interview. The head of household and the spouse/co-head will be strongly encouraged to attend the interview together. However, either the head of household or the spouse/co-head may attend the interview on behalf of the family. Verification of information pertaining to adult members of the household not present at the interview will not begin until signed release forms are returned to the PHA. An advocate, interpreter, or other assistant may assist the family with the application and the interview process.

If the family is unable to attend a scheduled interview, the family should contact the Housing Authority in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, a second notification letter with a new interview appointment time will be sent. Applicants who fail to attend two scheduled interviews without LHA approval will be denied assistance based on the family's failure to supply information needed to determine eligibility. A notice of denial will be issued in accordance with policies contained in Chapter 3.

#### **4-III.F. COMPLETING THE APPLICATION PROCESS**

If the Housing Authority determines that the family is ineligible, LHA will send written notification of the ineligibility determination within 10 business days of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review (Chapter 16).

If a family fails to qualify for any criteria that affected the order in which it was selected from the waiting list (e.g. extremely low-income, preference), the family will be returned to its original position on the waiting list. The Housing Authority will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.

## CHAPTER 5: BRIEFINGS AND VOUCHER ISSUANCE

### INTRODUCTION

This chapter explains the briefing and voucher issuance process. When a family is determined to be eligible for the Housing Choice Voucher (HCV) program, the Housing Authority must ensure that the family fully understands the way the program operates and the family's obligations under the program. This is accomplished through both an oral briefing and provision of a briefing packet containing written documentation of information the family needs to know. Once the family is fully informed of the program's requirements, the Housing Authority issues the family a voucher. The voucher includes the unit size the family qualifies for based on LHA's subsidy standards, as well as the dates of issuance and expiration of the voucher. The voucher is the document that permits the family to begin searching for a unit, and limits the amount of time the family has to successfully locate an acceptable unit.

These policies are contained in two parts:

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

Part II: Subsidy Standards and Voucher Issuance. This part discusses the 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 successfully locate an acceptable unit before the voucher expires.

### PART I: BRIEFINGS AND FAMILY OBLIGATIONS

#### 5-I.A. OVERVIEW

HUD regulations require the Housing Authority to conduct mandatory briefings for applicant families. The briefing provides a broad description of owner and family responsibilities, explains the Housing Authority's procedures, and includes instructions on how to lease a unit. This part describes how oral briefings will be conducted, specifics as to what written information will be provided to families, and lists a family's obligations under the program.

#### 5-I.B. BRIEFING [24 CFR 982.301]

Briefings may be conducted either in groups or in individual meetings and can be conducted either in-person or remotely. Generally, the head of household is required to attend the briefing. If the head of household is unable to attend, the Housing Authority may approve another adult family member such as the co-head to attend the briefing.

The briefing will cover at least the following subjects:

- ❖ A description of how the program works;
- ❖ Family and owner responsibilities;
- ❖ Where the family may rent a unit, including inside and outside the Housing Authority's jurisdiction;
- ❖ Types of eligible housing;

- ❖ For families qualified to lease a unit outside the Housing Authority's jurisdiction under portability, an explanation of how portability works;
- ❖ An explanation of the advantages of living in an area that does not have a high concentration of poor families; and
- ❖ An explanation that the family share of rent may not exceed 40% of the family's monthly-adjusted income.

Families that attend group briefings and still have the need for individual assistance will be referred to an appropriate LHA staff person.

### **Notification and Attendance**

Families will be notified to attend a briefing based on date and time of application, preferences, and available funding. The notice will identify who is required to attend the briefing, rather the briefing will be done remotely or in-person, 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 become inactive. If an applicant who becomes inactive does not update their application within six (6) months of the date they are made inactive, they will be sent a letter advising them that their name will be purged from 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 automatically be scheduled for another briefing. LHA will notify the family of the date and time of the next scheduled briefing. Applicants who fail to attend three (3) scheduled briefings, without LHA approval, must reapply. (See Chapter 3).

### **In-Person Briefings**

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. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

In-person briefings will generally be conducted in group meetings. At the family's written request, the PHA may provide an individual briefing.

Generally, the head of household is required to attend the briefing. If the head of household is unable to attend, the PHA may approve another adult family member 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 interpretation services in accordance with the PHA's LEP plan.

## **Remote Briefings [Notice PIH 2020-32]**

Remote briefings may be conducted over the phone, via video conferencing, or through other virtual platforms.

The PHA has the sole discretion to require that briefings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster. If the PHA schedules a remote briefing, the PHA will conduct a face-to-face briefing upon request of the applicant as a reasonable accommodation for a person with a disability if safety and health concerns can be reasonably addressed.

In addition, the PHA will conduct a briefing remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have child care or transportation that would enable them to attend the briefing, or if the applicant believes an in-person briefing would create an undue health risk. The PHA will consider other reasonable requests for a remote briefing on a case-by-case basis.

### **Accessibility Requirements for Persons with Disabilities and LEP Individuals**

As with in-person briefings, the platform for conducting remote briefings must be accessible and the briefing conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual.

If no method of conducting a remote briefing is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual his or her inability to participate in the remote briefing, and the PHA should consider whether postponing the remote briefing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances.

Limited English Proficiency (LEP) requirements also apply to remote briefings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote briefings.

### **Conducting Remote Briefings**

The PHA must ensure that the lack of technology or inability to use technology for remote briefings does not pose a disadvantage to families that may not be apparent to the PHA. The PHA must ensure that the family has appropriate technological access in order to fully participate in the remote briefing.

At least 10 business days prior to scheduling the remote briefing, the PHA will provide written notification via first class mail and/or email to families participating in the briefing to advise of technological requirements and to request the family notify the PHA of any known barriers. If

any family does not respond within five business days, or if the written notification is returned by the post office or the email is rejected, the PHA will contact the family by telephone to identify potential technological barriers and to determine which technology resources are accessible to the family. The PHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person briefing or have a one-on-one briefing over the phone, as appropriate.

The PHA will conduct remote briefings via a video conferencing platform when available. If applicants are unable to adequately access the video conferencing platform, the briefing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in, the remote briefing will be postponed, and an in-person alternative or one-on-one briefing over the phone will be provided.

The PHA will provide login information and/or conferencing call-in information and an electronic copy of the briefing packet via email at least five business days before the briefing. The PHA will provide a paper copy of the briefing packet upon family request, and may reschedule the briefing to allow adequate time for the family to receive the physical briefing packet.

The PHA will ensure that all electronic information stored or transmitted as part of the briefing meets the requirements for accessibility for persons with disabilities and persons with LEP, and is secure, including ensuring personally identifiable information (PII) is protected.

### **Briefing Packet [24 CFR 982.301(b); New HCV GB, *Housing Search and Leasing*, p. 7]**

During the briefing, the Housing Authority will give the family a packet covering at least the following subjects. Briefing may be done with voucher issuance done at a later date.

- ❖ The term of the voucher and the Housing Authority's policy on extensions and suspensions of the term as well as guidance on how to request an extension;
- ❖ How the Housing Authority determines the housing assistance payment and total tenant payment for the family;
- ❖ Information on the payment standard, exception payment standard rent areas, and the utility allowance schedule;
- ❖ How the Housing Authority determines the maximum rent for an assisted unit;
- ❖ Where the family may lease a unit. Explanation of how portability works;
- ❖ The HUD-required tenancy addendum that provides the language that must be included in any assisted lease, and a sample contract;
- ❖ The request for approval of the tenancy form and an explanation of how to request Housing Authority approval of a unit;
- ❖ A statement of the Housing Authority's policy on providing information to prospective owners. This policy requires applicants to sign disclosure statements allowing the Housing Authority to provide prospective owners with the family's current and prior addresses and the names and addresses of the landlords for those addresses. Upon request, the Housing Authority will also supply any factual information or third party verification relating to the applicant's history as a tenant or their ability to comply with material standard lease terms or any history of drug trafficking, drug-related criminal activity or any violent criminal activity;

- ❖ The Housing Authority’s subsidy standards, including when the Housing Authority will consider granting exceptions to the standards;
- ❖ “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 2017-12;
- ❖ The HUD brochure on how to select a unit (“A Good Place to Live”);
- ❖ The HUD-required lead-based paint brochure;
- ❖ Information on Federal, State, and local equal opportunity laws; the brochure “Fair Housing: It’s Your Right;” and a copy of the housing discrimination complaint form;
- ❖ A list of landlords or other parties known to the Laurinburg Housing Authority who may be willing to lease a unit to the family or help the family find a unit;
- ❖ Notice that if the family includes a person with disabilities, the family may request a current list of accessible units known to the Laurinburg Housing Authority that may be available;
- ❖ The family’s obligations under the program;
- ❖ The grounds upon which the Housing Authority may terminate assistance because of the family’s action or inaction;
- ❖ Laurinburg Housing Authority informal hearing procedures, including when the Housing Authority is required to provide the opportunity for an informal hearing, and information on how to request a hearing;
- ❖ The Laurinburg Housing Authority owner information brochure. This brochure can be given by the applicant to a prospective owner to help explain the program; and
- ❖ Information about the protections afforded by the Violence Against Women Act (VAWA) to victims of domestic violence, dating violence, sexual assault, and stalking.
- ❖ An explanation of the advantages of moving to an area that does not have a high concentration of low-income families.

### **5-I.C. FAMILY OBLIGATIONS**

Obligations of the family are described in the housing choice voucher (HCV) regulations and on the voucher itself. These obligations include responsibilities the family is required to fulfill, as well as prohibited actions. The Housing Authority must inform families of these obligations during the oral briefing, and the same information must be included in the briefing packet. When the family’s unit is approved and the HAP contract is executed, the family must meet those obligations in order to continue participating in the program. Violation of any family obligation may result in termination of assistance as described in Chapter 12.

#### *Time Frames for Reporting Changes Required by Family Obligations*

Unless otherwise noted, when family obligations require the family to respond to a request or notify the Housing Authority of a change in household composition or income, the family must respond to the request or change within 10 business days. This information must be provided in writing.

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

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

- ❖ The family must supply any information that the Housing Authority 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 Housing Authority or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- ❖ The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- ❖ Any information supplied by the family must be true and complete.
- ❖ The family is responsible for any Housing Quality Standards (HQS) breach caused by family failure to pay tenant-provided utilities. This includes personal appliances (and the owner's appliances), damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest. The family must correct life-threatening defects the family causes within 24hrs.
- ❖ The family must not commit any serious or repeated violation of the lease.
- ❖ The family must notify the Housing Authority and the owner before moving out of the unit or terminating the lease by providing a written 30-day notice.
- ❖ The family must promptly give the Housing Authority 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 Housing Authority must approve the composition of the assisted family residing in the unit. The family must promptly notify the Housing Authority in writing of the birth, adoption, foster child/adult long-term placement, marriage, or court-awarded custody of a child. The family must request LHA approval to add any other family member as an occupant. This request must be made and approved prior to them moving into the unit.
- ❖ The family must promptly notify LHA in writing if any family member no longer lives in the unit. If the Housing Authority has given approval, a live-in aide may reside in the unit. Please refer to Chapter 11 for more information regarding the rules concerning live-in aides.
- ❖ The family must not sublease the unit, assign the lease, or transfer the unit.
- ❖ The family must supply any information requested by LHA to verify that the family is living in the unit or information related to family absence from the unit.
- ❖ 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.
- ❖ Family members must not commit fraud, bribery, or any other corrupt or criminal activity in connection with the program.
- ❖ Family members must not engage in drug-related criminal activity or violent 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 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 Housing Authority 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.

## **PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE**

### **5-II.A. OVERVIEW**

The Laurinburg Housing Authority must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions. This part presents the policies that will be used to determine the family unit size (also known as the voucher size) a particular family should receive, and the policies that govern making exceptions to those standards. The Housing Authority must also establish policies related to the issuance of the voucher, to the voucher term, and to any extensions of the voucher term.

### **5-II.B. DETERMINING FAMILY UNIT (VOUCHER) SIZE [24 CFR 982.402]**

The Laurinburg Housing Authority will issue a voucher for a particular bedroom size – the bedroom size is a factor in determining the family’s level of assistance. This determination is based on the assumption that each bedroom will accommodate no more than two (2) persons.

In determining bedroom size, the Laurinburg Housing Authority will include the presence of children to be born to a pregnant woman, children who are in the process of being adopted, children whose custody is being obtained, children who are temporarily away at school or temporarily in foster-care. A family that consists of a pregnant woman only, and no other persons, **must** be treated as a two-person family in determining the family’s unit size (24 CFR 982.402(b)(3)). If the Housing Authority has approved a live-in aide for a family member who is disabled or is at least 50 years of age, the live-in aide will be counted when determining the family unit size. Although the live-in aide may have PHA-approved family members live with him or her in the assisted unit, no additional bedrooms may be provided for the family members of the live-in aide (PIH Notice 2014-25). LHA will ensure that approval of the live-in aide’s family will not violate HQS.

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

### **5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS [24 CFR 982.402(b)(8)]**

The Laurinburg Housing Authority will consider exceptions to normal occupancy standards when a family requests a larger size than the guidelines allow and documents a medical reason why the larger size is necessary. Reasons may include, but are not limited to:

- ❖ A need for an additional bedroom for medical equipment

- ❖ A need for a separate bedroom for reason related to family member's disability, medical or health condition

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

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

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

#### **5-II.D. VOUCHER ISSUANCE [24 CFR 982.302]**

Prior to issuing any vouchers, the PHA will determine whether it has sufficient funding in accordance with the policies in Part VIII of Chapter 16.

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

When the family finds a unit that the owner is willing to lease under the program, the family and the owner will complete and sign a proposed lease; the HUD required tenancy addendum and the request for Tenancy Approval Form. The family will submit the proposed lease and the request form to the Housing Authority during the term of the voucher. The Housing Authority will review the request, the lease, and the HUD required tenancy addendum and make an initial determination of approval of tenancy. The Housing Authority may assist the family in negotiating changes that may be required for the tenancy to be approvable. Once it appears the tenancy may be approvable, the Housing Authority will schedule an appointment to inspect the unit within 10 business days after the receipt of inspection request from the family and owner. The 10 business day period is suspended during any period the unit is unavailable for inspection. The Housing Authority will promptly notify the owner and the family whether or not the unit and tenancy are approvable.

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

Additional screening is the responsibility of the owner. Upon request by a prospective owner, the

Housing Authority will provide any factual information or third party written information they have relevant to a voucher holder's history of, or ability to, comply with standard material lease terms.

## **5-II.E. VOUCHER TERM AND EXTENSIONS**

### **Voucher Term [24 CFR 982.303]**

The initial voucher term will be 180 calendar days and will be stated on the Housing Choice Voucher. The family must submit a Request for Tenancy Approval and proposed lease within the 180-day period unless the Housing Authority grants an extension.

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

The Housing Authority may grant more extensions of the voucher term, but the initial term plus any extensions will never exceed 270 calendar days from the initial date of issuance. To obtain an extension, the family must make a request in writing prior to the expiration date. A statement of the efforts the family has made to find a unit must accompany the request. A form for recording their search efforts will be included in the family's briefing packet.

The LHA will approve additional extensions only in the following circumstances:

It is necessary as a reasonable accommodation for a person with disabilities.

It is necessary due to reasons beyond the family's control, as determined by the LHA. Following is a list of extenuating circumstances that LHA may consider in making its decision. The presence of these circumstances does not guarantee that an extension will be granted:

Serious illness or death in the family

Other family emergency

Obstacles due to employment

Whether the family has already submitted requests for tenancy approval that were not approved by the LHA

Whether family size or other special circumstances make it difficult to find a suitable unit

Any request for an additional extension must include the reason(s) an additional extension is necessary. The LHA may require the family to provide documentation to support the request or obtain verification from a qualified third party.

All requests for extensions to the voucher term must be made in writing and submitted to the LHA prior to the expiration date of the voucher (or extended term of the voucher).

The LHA 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)]**

Upon submittal of a completed request for Tenancy Approval Form, the Laurinburg Housing Authority will suspend the term of the voucher. The term will be in suspension until the date the Housing Authority provides notice that the request has been approved or denied. This policy allows families the full term (180 days, or more with extensions) to find a unit, not penalizing them for the period during which the Housing Authority is taking action on their request. A family may submit a second request for approval of tenancy before the Housing Authority finalizes action on the first request. In this case, the suspension will last from the date of the first submittal through the Housing Authority's action on the second submittal. No more than two requests will be concurrently considered.

### **Expiration of Voucher Term**

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

Within 10 business days after the expiration of the voucher term or any extension, the Housing Authority 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

### INTRODUCTION

This chapter describes HUD regulations and Laurinburg Housing Authority policies related to income and subsidy determinations. The chapter is organized as follows:

Part I: Annual Income. HUD regulations specify the sources of income to include and exclude to arrive at a family's annual income. These requirements and PHA policies for calculating annual income are found in Part I.

Part II: Adjusted Income. Once annual income has been established, HUD regulations require the PHA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and PHA policies for calculating adjusted income are found in Part II.

Part III: Calculating Family Share and PHA Subsidy. Part III describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining PHA subsidy and required family payment.

### PART I: ANNUAL INCOME

#### 6-I.A. OVERVIEW

The general regulatory definition of *annual income* shown below is from 24 CFR 5.609.

5.609 Annual income.

(a) Annual income means all amounts, monetary or 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 [5.609(c)].
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

In addition to this general definition, HUD regulations establish policies for treating specific types of income and assets. The full texts of those portions of the regulations are provided in exhibits at the end of this chapter as follows:

- Annual Income Inclusions (Exhibit 6-1)
- Annual Income Exclusions (Exhibit 6-2)
- Treatment of Family Assets (Exhibit 6-3)
- Earned Income Disallowance for Persons with Disabilities (Exhibit 6-4)
- The Effect of Welfare Benefit Reduction (Exhibit 6-5)

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. HUD regulations present income inclusions and exclusions separately [24 CFR 5.609(b) and 24 CFR 5.609(c)]. In this plan, however, the discussions of income inclusions and exclusions are integrated by topic (e.g., all policies affecting earned income are discussed together in section 6-I.D). Verification requirements for annual income are discussed in Chapter 7.

### **6-I.B. HOUSEHOLD 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 cohead<br>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)].<br>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 cohead) | Employment income above \$480/year is excluded [24 CFR 5.609(c)(11)].<br>All other sources of income, except those specifically excluded by the regulations, are included. |

#### **Temporarily Absent Family Members**

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit [HCV GB, p. 5-18].

Generally an individual who is or is expected to be absent from the assisted unit for 180 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 180 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

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

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

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

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 that 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 180 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 [HCV GB, p. 5-22].

The PHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. 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 cohead qualifies as an elderly person or a person with disabilities.

### **Joint Custody of Dependents**

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, school records, or an IRS return showing which family has claimed the child for income tax purposes.

### **Caretakers for a Child**

The approval of a caretaker is at the owner and LHA'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, the PHA will take the following actions.

- (1) If a responsible agency has determined that another adult is to be brought into the assisted unit to care for a child for an indefinite period, the designated 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 that the caretaker's role is temporary. In such cases the PHA will extend the caretaker's status as an eligible visitor.
- (3) At any time that 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.

### **6-I.C. ANTICIPATING ANNUAL INCOME**

The Housing Authority is required to count all income "anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date" [24 CFR 5.609(a)(2)].

#### **Basis of Annual Income Projection**

The Housing Authority generally will use current circumstances to determine anticipated income for the coming 12-month period. However, under certain conditions, HUD authorizes the Housing Authority to use other than current circumstances to anticipate income. Chapter 7 provides detail on the income verification process.

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.

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 Chapter 7 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.

In such cases, the PHA will review and analyze current data to anticipate annual income. In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the PHA annualized projected income.

When the PHA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the PHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income.

Any time current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the PHA to show why the historic pattern does not represent the family's anticipated income.

### ***Known Changes in Income***

If the Housing Authority 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 \$8/hour will begin to receive \$8.25/hour in the eighth week after the effective date of the reexamination. In such a case, the PHA would calculate annual income as follows:  
( $\$8/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}$ ) + ( $\$8.25 \times 40 \text{ hours} \times 45 \text{ weeks}$ ).

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases, LHA will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs.

## **6-I.D. EARNED INCOME [24 CFR 5.609(b) and (c)]**

### **Types of Earned Income Included in Annual Income**

#### ***Wages and Related Compensation [24 CFR 5.609(b)(1)]***

The regulation at 24 CFR 5.609(b)(1) requires the Housing Authority to include in annual income all forms of "compensation for personal services." While some forms, like regular wages and salaries, may be easy to anticipate, other forms, like bonuses and commissions, may vary considerably from one pay period to the next.

For persons who regularly receive bonuses or commissions, LHA will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, the Housing Authority will use the prior year amounts. In either case, the family may provide, and the Housing Authority will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, LHA will count only the amount estimated by the employer. The file will be documented appropriately.

#### ***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 Earned Income Not Counted in Annual Income**

### ***Temporary, Nonrecurring, or Sporadic Income [24 CFR 5.609(c)(9)]***

Sporadic income is income that is not received periodically and cannot be reliably predicted. For example, the income of an individual who works occasionally as a handyman would be considered sporadic if future work could not be anticipated and no historic, stable pattern of income existed.

### ***Children's Earnings***

Employment income earned by children (including foster children) under the age of 18 years is not included in annual income [24 CFR 5.609(c)(1)]. (See Eligibility chapter for a definition of *foster children*.)

### ***Certain Earned Income of Full-Time Students***

Earnings in excess of \$480 for each full-time student 18 years old or older (except for the head, spouse, or co-head) are not counted [24 CFR 5.609(c)(11)]. To be considered "full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

### ***Income of a Live-in Aide***

Income 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)]. (See Eligibility chapter for a full discussion of live-in aides.)

### ***Income Earned under Certain Federal Programs***

Income from some federal programs is specifically excluded from consideration as income [24 CFR 5.609(c)(17)], including:

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

### ***Resident Service Stipend***

Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the 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 [24 CFR 5.609(c)(8)(v)]***

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.

*Training program* is defined 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 of 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].

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

In calculating the incremental difference, the Housing Authority 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 Housing Authority’s interim reporting requirements.

### ***HUD-Funded Training Programs [24 CFR 5.609(c)(8)(i)]***

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***

The earned income disallowance for persons with disabilities is discussed in section 6-I.E below.

## **6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES [24 CFR 5.617; Streamlining Final Rule (SFR) Federal Register 3/8/16]**

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 straight period of time. The Laurinburg Housing Authority will administer the requirement in accordance with 24 CFR 5.617 and the guidance provided in PIH Notice 2016-05, Attachment E.

## **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 earning 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 their "baseline income." The family member's baseline income is their income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that they are participating in the EID.

### **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. 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 12-month exclusion period, the PHA will exclude 100 percent of any increase in income attributable to new employment or increased earnings.

#### ***Lifetime Limitation***

The EID has a consecutive 24-month maximum. The eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another Housing

Authority. During the 24-month eligibility period, LHA 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 their prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

#### **6-I.F. BUSINESS INCOME [24 CFR 5.609(b)(2)]**

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

#### **Business Expenses**

Net income is gross income less business expense. 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 rules specify that the cost of business expansion may not be used to determine net income from a business but does not define *business expansion*. *Business expansion* is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate a 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 rules specify that amortization of capital indebtedness cannot be counted as a business expense for the purpose of determining net income. *Capital indebtedness* is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means the Housing Authority will allow as a business expense interest, but not principal, paid on capital indebtedness.

#### **Negative Business Income**

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

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

HUD regulations requires the Housing Authority to include in annual income the value of cash or assets withdrawn from a business unless the withdrawal reimburses a family member for investments the family has made in the business. 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 Housing Authority

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**

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

## **6-I.G. ASSETS [24 CFR 5.609(b)(3); 24 CFR 5.603(b)]**

### **Overview**

There is no asset limitation for participation in the HCV program. However, HUD requires that the PHA include in annual income the anticipated "interest, dividends, and other net income of any kind from real or personal property" [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, the PHA must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

- How the value of the asset will be determined
- How income from the asset will be calculated

Exhibit 6-1 provides the regulatory requirements for calculating income from assets [24 CFR 5.609(b)(3)], and Exhibit 6-3 provides the regulatory definition of *net family assets*. This section begins with a discussion of general policies related to assets and then provides HUD rules and PHA policies related to each type of asset.

Optional policies for family self-certification of assets are found in Chapter 7.

### ***Income from Assets***

LHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. Anytime current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases, the family may present information and documentation to the Housing Authority to show why the asset income determination does not represent the family's anticipated asset income.

### ***Valuing Assets***

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 the family places the money in a savings, checking, or other type of account.

### ***Imputing Income from Assets***

Laurinburg Housing Authority will initially set the imputed asset passbook rate at the national rate established by the Federal Deposit Insurance Corporation (FDIC). The PHA will review the passbook rate annually, in December of each year. The rate will not be adjusted unless the current PHA rate is no longer within 0.75 percent of the national rate. If it is no longer within 0.75 percent of the national rate, the passbook rate will be set at the current national rate.

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

It may or may not be necessary for the Housing Authority 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.

### ***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***

If more than one person owns an asset 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.

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

### ***Assets Disposed Of for Less than Fair Market Value***

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 *HCV 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].

The PHA 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 \$1,000.

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



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

#### *Separation or Divorce*

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

#### *Family Declaration*

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

### **Types of Assets**

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

For regular checking 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.

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

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.

### ***Equity in Real Property or Other Capital Investments***

Equity is the estimated current market value of an asset (such as a house) less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset [HCV GB, p. 5-25].

In determining the equity, the PHA will determine market value by examining recent sales of at least three properties in the surrounding or similar neighborhood that possess comparable factors that affect market value.

### ***Trusts***

A *trust* is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

#### ***Revocable Trusts***

If any member of a family has the right to withdraw the funds in a trust, the value of the trust is considered an asset [HCV GB, p. 5-25]. Any income earned as a result of investment of trust funds is counted as actual asset income, whether the income is paid to the family or deposited in the trust.

#### ***Non-revocable Trusts***

In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset. However, any income distributed to the family from such a trust is counted as a periodic payment or a lump-sum receipt, as appropriate [24 CFR 5.603(b)]. (Periodic payments are covered in section 6-I.H. Lump-sum receipts are discussed earlier in this section.)

### ***Retirement Accounts***

#### ***Company Retirement/Pension Accounts***

In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, the PHA must know whether the money is accessible before retirement [HCV GB, p. 5-26].

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset [HCV GB, p. 5-26].

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 5-26], except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, see section 6-I.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

#### ***IRA, Keogh, and Similar Retirement Savings Accounts***

IRA, Keogh, and similar retirement savings accounts are counted as assets even though early withdrawal would result in a penalty [HCV GB, p. 5-25].

### ***Personal Property***

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset [HCV GB, p. 5-25].

#### PHA Policy

In determining the value of personal property held as an investment, the PHA will use the family's estimate of the value. The PHA may obtain an appraisal to confirm the value of the asset if there is reason to believe that the family's estimated value is off by \$50 or more. The family must cooperate with the appraiser, but cannot be charged any costs related to the appraisal.

Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.

Necessary items of personal property are not considered assets [24 CFR 5.603(b)].

#### PHA Policy

Necessary personal property consists of only those items not held as an investment, and may include clothing, furniture, household furnishings, jewelry, and vehicles, including those specially equipped for persons with disabilities.

### ***Life Insurance***

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

## **6-I.H. PERIODIC PAYMENTS**

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

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

Most lump sum payments received because of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump sum payments for

the delayed start of periodic social security benefits or supplemental security income (SSI) payments are not counted as income. [24 CFR 5.609 (b)(4)].

When a delayed-start payment is received, the family must report the change within 10 business days to the Housing Authority. LHA will then assess the family situation and determine whether to adjust the family share and subsidy. If the determination requires the family to make retroactive payments for the period the payment was intended to cover, the family may pay the full amount due or request to enter into a repayment agreement. See Chapter for information about the family's obligation to report lump-sum receipts between annual reexaminations. See Chapter 16 for policies related to repayment agreements.

### **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 their 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 2018-24].

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

The Housing Authority 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.H.) [24 CFR 5.609(c)(14)].
- Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [24 CFR 5.609(c)(14)].

### **6-I.I. PAYMENTS IN LIEU OF EARNINGS**

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income [24 CFR 5.609 (b)(5)] if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in

a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts [24 CFR 5.609(c)(3)].

## **6-I.J. WELFARE ASSISTANCE**

Welfare assistance is counted in 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 provide the reason for the reduction of benefits and the amount of the reduction of benefits. The imputed welfare income is the amount that the benefits were reduced as a result of the sanction.

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

## **6-I.K. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(b)(7)]**

### **Alimony and Child Support**

The PHA will count court-awarded amounts for alimony and child support unless the Housing Authority 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 someone outside the family [24 CFR 5.609(b)(7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

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.

### **6-I.L. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9); Notice PIH 2015-21]**

In 2005, Congress passed a law (for Section 8 programs only) requiring that certain student financial assistance be included in annual income. Prior to that, the full amount of student financial assistance was excluded. For some students, the full exclusion still applies.

#### **Student Financial Assistance Included in Annual Income [24 CFR 5.609(b)(9); FR 4/10/06; Notice PIH 2015-21]**

The regulation requiring the inclusion of certain student financial assistance applies only to students who satisfy all of the following conditions:

- They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 1965.
- They are seeking or receiving Section 8 assistance on their own—that is, apart from their parents—through the HCV program, the project-based voucher program, or the moderate rehabilitation program.
- They are under 24 years of age **OR** they have no dependent children.

For students who satisfy these three conditions, any financial assistance in excess of tuition and any other required fees and charges received: (1) under the 1965 HEA, (2) from a private source, or (3) from an institution of higher education, as defined under the 1965 HEA, must be included in annual income.

To determine annual income in accordance with the above requirements, the PHA will use the definitions of *dependent child*, *institution of higher education*, and *parents* in section 3-II.E, along with the following definitions [FR 4/10/06, pp. 18148-18150]:

- *Assistance under the Higher Education Act of 1965* includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State

Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.

- *Assistance from private sources* means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.
- *Tuition and fees* are defined in the same manner in which the Department of Education defines *tuition and fees* [Notice PIH 2015-21].
  - This is the amount of tuition and required fees covering a full academic year most frequently charged to students.
  - The amount represents what a typical student would be charged and may not be the same for all students at an institution.
  - If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an academic year is used to estimate average tuition.
  - Required fees include all fixed-sum charges that are required of a large proportion of all students. Examples include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).
  - Expenses related to attending an institution of higher education must **not** be included as tuition. Examples include, but are not limited to, room and board, books, supplies, meal plans, transportation and parking, student health insurance plans, and other non-fixed-sum charges.

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

Any student financial assistance not subject to inclusion under 24 CFR 5.609(b)(9) is fully excluded from annual income under 24 CFR 5.609(c)(6), whether it is paid directly to the student or to the educational institution the student is attending. This includes any financial assistance received by:

- Students residing with parents who are seeking or receiving Section 8 assistance
- Students who are enrolled in an educational institution that does **not** meet the 1965 HEA definition of *institution of higher education*
- Students who are over 23 **AND** have at least one dependent child, as defined in section 3-II.E
- Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.

#### **6-I.M. 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), FR Notice 5/20/14]. 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 child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- (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) (See Section 6-I.L. for exceptions.)
- (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
- (aa) Distributions from an ABLE account, and actual or imputed interest on the ABLE account balance

## 6-II.A. INTRODUCTION

### Overview

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

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

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family or disabled family;
- (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
  - (i) Unreimbursed medical expenses of any elderly family or disabled family;
  - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
- (4) Any reasonable 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 are found in Chapter 7.

### Anticipating Expenses

In the same way that the PHA must anticipate income for the coming year, it must also anticipate family circumstances to determine the deductions for which a family qualifies.

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

**6-II.B. DEPENDENT DEDUCTION**

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

**6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION**

A single deduction of \$400 is taken for any elderly or disabled family [24 CFR 5.611(a)(2)]. An *elderly family* is a family whose head, spouse, co-head, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, co-head, or sole member is a person with disabilities [24 CFR 5.403].

**6-II.D. MEDICAL EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i)]**

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three percent of annual income.

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

**Definition of *Medical Expenses***

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

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

| <b>Summary of Allowable Medical Expenses from IRS Publication 502</b>  |   |
|--|---|
| Services of medical professionals  | Psychiatric treatment   |
| Surgery and medical procedures that are necessary, legal, non-cosmetic                                       | Ambulance services and some costs of transportation related to medical expenses   |
| Services of medical facilities   | The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth) |
| Hospitalization, long-term care, and in-home nursing services  | Cost and continuing care of necessary service animals   |
| Prescription medicines and insulin, but <u>not</u> nonprescription medicines even if recommended by a doctor | Medical insurance premiums or the cost of a health maintenance organization (HMO)   |
| Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)         |   |
| Substance abuse treatment programs   |   |

**Note:** 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.

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

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.

### **6-II.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)]**

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (1) are necessary to enable a family member 18 years or older to work, (2) are not paid to a family member or reimbursed by an outside source, (3) in combination with any medical expenses, exceed three percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work.

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

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)]. The disability expense deduction is capped by the amount of “earned income received by family members who are 18 years of age or older and who are able to work” because of the expense [24 CFR 5.611(a)(3)(ii)]. The earned income used for this purpose is the amount verified before any earned income disallowances or income exclusions are applied.

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***

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.

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.

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**

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.

## **6-II.F. CHILD CARE EXPENSE DEDUCTION**

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

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

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

### **Qualifying for the Deduction**

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

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***

If the child care expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member’s efforts to obtain employment at each reexamination. 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***

If the childcare expense being claimed is to enable a family member to further their 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***

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 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 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, child care expenses are limited to \$5,000.

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].

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***

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

The costs of general housekeeping and personal services are not eligible. Likewise, 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 their education, and



(2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

Childcare expenses will be considered for the time required for the eligible activity plus reasonable 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 child care costs from a qualified local entity that either subsidizes child care costs or licenses child care providers. Families may present, and the PHA will consider, justification for costs that exceed typical costs in the area.

### **PART III: CALCULATING FAMILY SHARE AND PHA SUBSIDY**

#### **6-III.A. OVERVIEW OF RENT AND SUBSIDY CALCULATIONS**

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

A family's total tenant payment (TTP) is the greatest of:

- 30 percent of the family's monthly adjusted income
- 10 percent of the family's monthly gross income
- The welfare rent (in as-paid jurisdictions only)
- The minimum rent

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

Welfare rent does not apply in this locality.

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

The minimum rent for the Laurinburg Housing Authority is \$50.

##### **Utility Reimbursement [24 CFR 982.514(b); 982.514(c)]**

When the PHA subsidy exceeds a family's rent to owner, the family is due a utility reimbursement. The Laurinburg Housing Authority will make any utility reimbursements directly to the utility provider.

##### **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. (For a discussion of the application of payment standards, see section 6-III.C.)

### **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. (For a discussion of the application of payment standards, see section 6-III.C.).

### **Utility Reimbursement [24 CFR 982.514(b); 982.514(c)]**

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. The LHA will make monthly utility payments directly to the utility provider on behalf of the family.

## **6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630]**

### **Overview**

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.

### **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.

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).

(5) 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.

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.<br>TTP = \$50                    | Hardship exemption granted.<br>TTP = \$15 |

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family's ability to pay the minimum rent.

The PHA will make the determination of hardship within 30 calendar days.

***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.

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.

The PHA will enter into a repayment agreement in accordance with the procedures found in Chapter 16 of this plan.

### ***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.

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

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

## **6-III.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505; 982.503(b)]**

Payment standard is the maximum monthly assistance payment for a family assisted in the voucher program before deducting the total tenant payment by the family. The PHA must establish a payment standard schedule based on the FMR area in the PHA jurisdiction.

### **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.

### ***Decreases in Payment Standards***

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 no longer 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].

In accordance with the final rule [24 CFR 982.505 (c) (3)] and the HOTMA regulations, the Laurinburg Housing Authority has adopted the following option:

**Hold Harmless** – No reduction in subsidy. LHA will continue to use the existing higher payment standard for the family’s subsidy calculation for as long as the family continues to receive the voucher assistance in that unit.

***Increase in Payment Standard***

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.

During times when the PHA’s utilization rate falls below HUD’s SEMAP standard of 95%, the PHA may request HUD approval to use Success Rate Payment Standards. Success Rate Payment Standards are based on the 50<sup>th</sup> percentile FMR instead of the 40<sup>th</sup> percentile FMR. (Chapter 16)

***Changes in Family Unit Size (Voucher Size)***

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

**Reasonable Accommodation**

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, the PHA is allowed to establish a higher payment standard for the family of not more than 120 percent of the published FMR.

**6-III.D. APPLYING UTILITY ALLOWANCES [24 CFR 982.517]**

A PHA-established utility allowance schedule is used to determine family share and PHA subsidy.

**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 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 [HCV GB, p. 18-8]. 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 [HCV GB, p. 18-9].

#### **6.III.D. 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 Housing Authority will prorate the assistance provided to the mixed family. The PHA will determine the 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.

#### **6-III.E. PRORATED ASSISTANCE FOR MIXED FAMILIES [24 CFR 5.520]**

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The 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.

## EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

### 24 CFR 5.609

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

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

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

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
- (4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);
- (5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);
- (6) Welfare assistance payments.
  - (i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:
    - (A) Qualify as assistance under the TANF program definition at 45 CFR 260.31<sup>1</sup>; and
    - (B) Are not otherwise excluded under paragraph (c) of this section.

<sup>1</sup> Text of 45 CFR 260.31 follows.

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

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

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

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

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

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (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.

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| <p style="text-align: center;"><b>HHS DEFINITION OF<br/>"ASSISTANCE"</b></p> |
|--|

**45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

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

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

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

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).



(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) [The definition of “assistance”] excludes: (1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

## EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

### 24 CFR 5.609

*(c) Annual income does not include the following:*

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) Subject to paragraph (b)(9) of 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, child care, etc.) and which are made solely to allow participation in a specific program;
- (iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;
- (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9) Temporary, nonrecurring or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts, 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. [See Section 6-I.M. for a list of benefits that qualify for this exclusion.]

**EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS**

**24 CFR 5.603(b) Net Family Assets**

(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor.

In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

**EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES**

**24 CFR 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.**

*(a) Applicable programs.* The disallowance of earned 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 12-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.* Upon expiration of the 12-month period defined in paragraph (c)(1) of this section and for the subsequent 12-month period, the responsible entity must exclude from annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.

*(3) Maximum 2-year disallowance.* The disallowance of increased income of an

individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) of this section is limited to a lifetime 24-month period. The disallowance applies for a maximum of 12 months for disallowance under paragraph (c)(1) of this section and a maximum of 12 months for disallowance under paragraph (c)(2) of this section, 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).

## EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION

### 24 CFR 5.615

#### **Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.**

*(a) Applicability.* This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

*(b) Definitions.* The following definitions apply for purposes of this section:

*Covered families.* Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

*Economic self-sufficiency program.* See definition at Sec. 5.603.

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

*Specified welfare benefit reduction.*

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

- (i) at expiration of a lifetime or other time limit on the payment of welfare benefits;
- (ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or
- (iii) because a family member has not complied with other welfare agency requirements.

*(c) Imputed welfare income.*

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition,

during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

*(d) Review of PHA decision.*

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

*(e) PHA relation with welfare agency.*

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.



(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

## **CHAPTER 7: VERIFICATION [24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230]**

### **INTRODUCTION**

This chapter describes HUD regulations and Laurinburg Housing Authority policies related to verification of all information that is used to establish the family's eligibility and level of assistance as follows:

Part I: General Verification Requirements

Part II: Verifying Family Information

Part III: Verifying Income and Assets

Part IV: Verifying Mandatory Deductions

### **PART I: GENERAL VERIFICATION REQUIREMENTS**

#### **7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION**

The family must supply any information that the Housing Authority or HUD determines is necessary to the administration of the program and must consent to LHA verification of that information. 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. The Laurinburg Housing Authority and HUD will collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Adult family members must sign consent forms as needed to collect information relevant to the family's eligibility and level of assistance. If any family member who is required to sign a consent form refuses to do so, the Laurinburg Housing Authority 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 the Housing Authority's procedures.

#### **7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS**

##### **HUD's Verification Hierarchy**

HUD authorizes the Housing Authority to use five methods to verify family information and specifies the circumstances in which each method will be used. In general, HUD requires the Housing Authority to use the most reliable form of verification that is available and to document the reasons when the lesser form of verification is used. In order of priority, the forms of verification that may be used are:

- ❖ Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) System
- ❖ Up-front Income Verification (UIV) using a non-HUD system
- ❖ Written Third-party Verification form (may be provided by applicant or participant)
- ❖ Oral Third-party Verification
- ❖ Self-Certification

## Requirements for Acceptable Documents

Any documents used for verification must be the original (not photocopies) and generally must be dated within 60 calendar days of the LHA request. The documents must not be damaged, altered or in any way illegible. Printouts from Web pages are considered original documents.

Any family self-certifications must be made in a format acceptable to the Housing Authority and must be signed in the presence of a LHA representative or notary public.

The chart below outlines the factors that may be verified and gives common examples of the verification that will be sought:

| Verification Requirements for Individual Items |   |  |
|--|---|--|
| Item to Be Verified                            | 3 <sup>rd</sup> party verification  | Hand-carried verification  |
| <b>General Eligibility Items</b>               |   |  |
| Social Security Number                         | Letter from Social Security, electronic reports   | Social Security card   |
| Citizenship                                    | N/A   | Signed certification, voter's registration card, birth certificate, etc.                       |
| Eligible immigration status                    | INS SAVE confirmation #   | INS card   |
| Disability                                     | Letter from medical professional, SSI, etc.   | Proof of SSI or Social Security disability payments  |
| Full time student status (if >18)              | Letter from school  | For high school students, any document evidencing enrollment                                   |
| Need for a live-in aide                        | Letter from doctor or other professional knowledgeable of condition   | N/A  |
| Child care costs                               | Letter from care provider   | Bills and receipts   |
| Disability assistance expenses                 | Letters from suppliers, care givers, etc.   | Bills and records of payment   |
| Medical expenses                               | Letters from providers, prescription record from pharmacy, medical professional's letter stating assistance or a companion animal is needed | Bills, receipts, records of payment, dates of trips, mileage log, receipts for fares and tolls |

| Verification Requirements for Individual Items     |   |  |
|--|---|--|
| Item to Be Verified                                | 3 <sup>rd</sup> party verification  | Hand-carried verification  |
| <b>Value of and Income from Assets</b>             |   |  |
| Savings, checking accounts                         | Letter from institution   | Passbook, most current statements  |
| CDs, bonds, etc.                                   | Letter from institution   | Tax return, information brochure from institution, the CD, the bond                                |
| Stocks   | Letter from broker or holding company   | Stock or most current statement, price in newspaper or through Internet                            |
| Real property                                      | Letter from tax office, assessment, etc.  | Property tax statement (for current value), assessment, records or income and expenses, tax return |
| Personal property                                  | Assessment, bluebook, etc.  | Receipt for purchase, other evidence of worth  |
| Cash value of life insurance policies              | Letter from insurance company   | Current statement  |
| Assets disposed of for less than fair market value | N/A   | Original receipt and receipt at disposition, other evidence of worth                               |
| <b>Income</b>                                      |   |  |
| Earned income                                      | Letter from employer  | Multiple pay stubs ( 4to 6 weeks)  |
| Self-employed                                      | N/A   | Tax return from prior year, books of accounts  |
| Regular gifts and contributions                    | Letter from source, letter from organization receiving gift (i.e., if grandmother pays day care provider, the day care provider could so state) | Bank deposits, other similar evidence  |
| Alimony/child support                              | Court order, letter from source, letter from Human Services   | Record of deposits, divorce decree   |

| Verification Requirements for Individual Items  |   |   |
|---|---|---|
| Item to Be Verified   | 3 <sup>rd</sup> party verification  | Hand-carried verification   |
| Periodic payments (i.e., social security, welfare, pensions, workers' comp, unemployment) | Letter or electronic reports from the source  | Award letter, letter announcing change in amount of future payments |
| Training program participation  | Letter from program provider indicating <ul style="list-style-type: none"> <li>- whether enrolled</li> <li>- whether training is HUD-funded</li> <li>- whether State or local program</li> <li>- whether it is employment training</li> <li>- whether payments are for out- of-pocket expenses incurred in order to participate in a program</li> </ul> | N/A   |

### **File Documentation**

LHA 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 LHA staff have 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.

- ❖ The Housing Authority 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 the 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 2018-18].

### **7-I.C. UP-FRONT INCOME VERIFICATION (UIV)**

#### **Upfront Income Verification Using HUD’s Enterprise Income Verification (EIV) System (Mandatory)**

HUD’s EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families. HUD requires the Housing Authority

to use the EIV system in its entirety. The following policies apply to the use of HUD's EIV system.

### **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 reexamination or recertification 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 and IVT Reports***

LHA will obtain income and IVT reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process. Income and IVT 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, as described in Chapter 6-I.C. 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 as described in Chapter 6-I.C. and in this chapter.

Income and IVT reports will be used in interim reexaminations to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to verify earned income, and to verify and calculate unemployment benefits, Social Security and/or SSI benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources.

Income and IVT reports will be retained in participant files with the applicable annual or interim reexamination documents. When LHA 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 in Chapter 14, Program Integrity.

#### ***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. LHA is required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2017-12].

LHA will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis. LHA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the participant. When the discrepancies exist due to LHA errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly.

### **Upfront Income Verification Using Non-HUD Systems (Optional)**

LHA will inform all applicants and participants of its use of the following UIV resources during the admission and reexamination process:

- ❖ HUD's EIV system

❖ State Wage Information Collection Agencies (SWICA)

**7-I.D. 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 Housing Authority by the family. If written third-party verification is not available, LHA 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 2017-12]**

Third-party documents provided by the family must be dated within 90 days of the PHA request date. If LHA determines that third party documents provided by the family are not acceptable, staff will explain the reason to the family and request additional documentation. As verification of earned income, LHA will require the family to provide 4-6 of their most current, consecutive pay stubs.

**Written Third-Party Verification Form**

While HUD considers standardized third-party forms to be less reliable than the third-party written verification described above, this form of verification is mandatory when the family cannot provide acceptable documentation. Written third-party verification is also required when there appears to be unreported income and other forms of verification are not available.

LHA will send third-party verification forms directly to the third party. Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by the Housing Authority.

Written third-party verification documents must be original and authentic and may 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, at minimum, two current and consecutive 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.

**Oral Third-Party Verification [Notice PIH 2017-12]**

Oral third-party verification is mandatory when neither form of written third-party verification is available. This method is typically used when an independent source fails to respond to a request for written documentation from LHA.

In collecting third-party oral verification, LHA 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 LHA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

### **When Third-Party Information is Not Required [Notice PIH 2017-12]**

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets or expenses when these items would have a minimal impact on the family's total tenant payment.

If the family cannot provide original documents, LHA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family. The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost.

#### ***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.

#### ***Imputed Assets***

HUD permits PHAs to accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28]. LHA will accept a self-certification in lieu of requesting third-party verification when the market value of an individual asset is less than \$5000 annually and the family has original documents that support the declared amount [HCV GB, p. 5-28].

#### ***Value of Assets and Asset Income [24 CFR 982.516(a)]***

For families with net assets totaling \$5,000 or less, LHA may accept the family's declaration of asset value and anticipated asset income. However, LHA is required to obtain third-party verification of all assets regardless of the amount during the intake process and at least every three years thereafter.

For families with net assets totaling \$5,000 or less, Housing Authority will accept the family's self-certification of the value of family assets and anticipated asset income when applicable. The family's declaration must show each asset and the amount of income expected from that asset. All family members 18 years of age and older must sign the family's declaration. The PHA will use third-party documentation for assets as part of the intake process, whenever a family member is added to verify the individual's assets, and every three years thereafter.

### **7-I.E. SELF-CERTIFICATION**

Self-certification is the **least-preferred** method of verification. It is to be used as a last resort when other verification sources are not available. 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 Housing Authority. LHA may require a family to certify that a family member does not receive a particular type of income or benefit.



The self-certification must be made in a format acceptable to LHA 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 LHA representative or notary public.

**PART II: VERIFYING FAMILY INFORMATION**

**7-II.A. VERIFICATION OF LEGAL IDENTITY**

Laurinburg Housing Authority requires families to furnish verification of legal identity for each household member. The chart below lists acceptable documentation:

| <b>Verification of Legal Identity for Adults</b>  | <b>Verification of Legal Identity for Children</b>   |
|---|--|
| Certificate of birth, naturalization papers<br>Current, valid driver's license or Department of Motor Vehicles identification card<br>U.S. military discharge (DD 214)<br>Current U.S. passport<br>Current employer identification card | Certificate of birth<br>Adoption papers<br>Custody agreement<br>Health and Human Services ID<br>Certified school records |

If a document submitted by a family is illegible for any reason or otherwise questionable, more than one of these documents may be required. Legal identity will be verified for all applicants at the time of eligibility determination and in cases where LHA has reason to doubt the identity of a person representing him or herself to be a participant.

**7-II.B. SOCIAL SECURITY NUMBERS**

The family must provide documentation of a valid social security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include existing program participants as of January 31, 2010, who have either previously disclosed social security numbers HUD has determined to be valid, or who are 62 years of age or older and had not previously disclosed an SSN [24 CFR 5.216(g) and Notice PIH 2012-10].

The PHA may only reject documentation of an SSN provided by an applicant or participant if the document is not an original document or if the original document has been altered, mutilated, is illegible, or appears to be forged. LHA will explain to the applicant or participant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the PHA within 90 days.

The PHA will grant one additional 90-day extension if needed for reasons beyond the applicant's control, such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency. If the individual fails to comply with SSN disclosure and documentation requirements upon expiration of the provided time period, the Housing Authority will terminate the individual's assistance.

LHA will verify each disclosed SSN by making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder

If an applicant family includes a child under 6 years of age who joined the household within the 6 months prior to the date of voucher issuance, an otherwise eligible family may be admitted to the program and the family must provide documentation of the child's SSN within 90 days of the effective date of the initial HAP contract. A 90-day extension will be granted if the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control.

The LHA will grant one additional 90-day extension if needed for reasons beyond the applicant's control, such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

When a participant requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the participant must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. The PHA may not add the new household member until such documentation is provided.

When a participant requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the participant must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period the PHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

The PHA will grant one additional 90-day extension if needed for reasons 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.

Social security numbers must be verified only once during continuously-assisted occupancy.

The PHA will verify each disclosed SSN by:

Obtaining documentation from applicants and participants that is acceptable as evidence of social security numbers

Making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder

Once the individual's verification status is classified as "verified," the PHA may, at its discretion, remove and destroy copies of documentation accepted as evidence of social security numbers. The retention of the EIV Summary Report or Income Report is adequate documentation of an individual's SSN.

## **7-II.C. DOCUMENTATION OF AGE**

Regulations at 24 CFR 982.516(a)(2)(iv) state that in addition to income, assets, and deductions, the PHA must verify “other factors that affect the determination of adjusted income.” Such factors include spousal relationships, age, and citizenship status, among others. Age is especially important for determination of income and deductions when someone in the family is under 18 or is age 62 or older. Generally, a birth certificate or other official record of birth is the preferred form of age verification, and for elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

## **7-II.D. FAMILY RELATIONSHIPS**

The relationship of each household member to the head of household may affect the determination of adjusted income and must therefore be verified [24 CFR 982.516(a)(2)(iv)]. Definitions of the primary household relationships are provided in Chapter 3. 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**

Certification by the head of household is normally sufficient verification. 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 that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

### **Separation or Divorce**

There may be situations where the Housing Authority would need to verify a separation or divorce beyond the certification of the head of household. Certification by the head of household is normally sufficient verification. If LHA has reasonable doubts about a separation or divorce, LHA will require the family to provide documentation of the divorce or separation. Acceptable documentation includes:

- ❖ A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.
- ❖ A copy of a court-ordered maintenance or other court record is required to document a separation.
- ❖ If no court document is available, documentation from a community-based agency will be accepted.

### **Absence of Adult Member**

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the

family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

### **Foster Children and Foster Adults**

When a family claims foster children or adults, LHA must verify their status to properly calculate the family's income and deductions. Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

### **7-II.E. VERIFICATION OF STUDENT STATUS**

The status of a student family member could affect the income or deductions for a family. LHA 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.

In accordance with the verification hierarchy described in Section 7-1.B, LHA 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 (see Section Exhibit 3-2).
- ❖ The student is at least 24 years old.
- ❖ The student is a veteran, as defined in Section 3-II.E.
- ❖ The student is married.
- ❖ The student has at least one dependent child, as defined in Section 3-II.E.
- ❖ The student is a person with disabilities, as defined in Section 3-II.E, and was receiving assistance prior to November 30, 2005.

If the at least one of these exemption criteria cannot be verified, LHA 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, LHA will then proceed to verify either the student's parents' income eligibility (see Section 7-III.J) or the student's independence from their parents (see below).

### ***Independent Student***

The PHA will verify a student's independence from their parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:

- 1) Either reviewing and verifying previous address information to determine whether the student has established a household separate from their 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* (see Section 3-II.E)
- 2) 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* (see section 3-II.E)
- 3) 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* (see section 3-II.E)

### **7-II.F. DOCUMENTATION OF DISABILITY**

The Laurinburg Housing Authority must verify the existence of a disability in order to allow certain income disallowances and deductions from income. For family members claiming disability who receive disability benefits from the SSA, LHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system. If documentation from HUD's EIV System is not available, the Housing Authority 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), LHA 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 LHA.

#### **Family Members Not Receiving SSA Disability Benefits**

For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

### **7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS**

#### **Overview**

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen, or an ineligible noncitizen.

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

HUD requires a declaration be signed by each family member (or by a guardian for minors) who claims to be a U.S. citizen or national. However, HUD states that a PHA may request further verification of the family member's status. Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless the Housing Authority receives information indicating that an individual's declaration may not be accurate.

### **Eligible Immigrants**

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. Family members age 62 or older who claim to be eligible immigrants, proof of age must be provided.

*PHA Verification* [HCV GB, pp. 5-3 and 5-7]

For family members under the age of 62 who claim to be eligible immigrants, the Housing Authority will verify immigration status with the U.S. Citizenship and Immigration Services following all USCIS protocols.

## **7-II.H. VERIFICATION OF PREFERENCE STATUS**

The PHA must verify any preferences claimed by an applicant that determined placement on the waiting list.

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 also offers a preference for victims of domestic violence, dating violence, sexual assault, or stalking, as described in Section 4-III.C. To verify that applicants qualify for the preference, the PHA will follow documentation requirements outlined in Section 16-IX.D.

## **PART III: VERIFYING INCOME AND ASSETS**

### **7-III.A. EARNED INCOME**

Chapter 6, Part I 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 section provides policies that supplement the general verification procedures.

#### **Tips**

The standard verification policies found in Part I of this chapter apply to the verification of earned income. However, tip income poses a unique situation in that it is difficult to anticipate and third-party verification is not always available. 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**

For wages other than tips, the family must provide originals of the most current, consecutive pay stubs. The family must provide 2-6 consecutive pay stubs.

### **7-III.B. BUSINESS AND SELF-EMPLOYMENT INCOME**

As with tip income, income from a business or from self-employment is often difficult to verify through a third party. Tax-related documents may be the best source of information; however, this is not anticipated income. Sometimes self-certification may be required. It is an even greater challenge if the business is new, since there will be no historical data to use as a basis for anticipating income. Business owners and self-employed persons will be required to provide:

- 1) 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.
- 2) All schedules completed for filing federal and local taxes in the preceding year
- 3) 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

At any reexamination, LHA may request documents that support submitted financial statements such as manifests, appointment books, cashbooks, or bank statements. If a family member has been self-employed less than three (3) months, LHA 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, LHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

### **7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

The standard verification policies found in Part I of this chapter apply to the verification of periodic payments and payments in lieu of earnings. Social security and SSI income are to be verified by HUD's EIV System when possible.

### **7-III.D. ALIMONY OR CHILD SUPPORT**

For alimony and child support, there could be two different scenarios; the family receives the court awarded or agreement amount, or the family does not receive the court awarded or agreement amount. LHA will use the following methods to verify alimony and child support payments. Verification will be sought in the following order:

- ❖ Copy of the receipts and/or payment stubs for the 60 days prior to PHA request
- ❖ Third-party verification form from the state or local child support enforcement agency
- ❖ Third-party verification form from the person paying the support
- ❖ Family's self-certification of amount received

### **7-III.E. ASSETS AND INCOME FROM ASSETS**

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

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. LHA will verify the value of assets disposed of only if:

- 1) The PHA does not already have a reasonable estimation of its value from previously collected information, or
- 2) The amount reported by the family in the certification appears obviously in error.

### **7-III.F. NET INCOME FROM RENTAL PROPERTY**

Families who receive an income from rental property must provide adequate information for LHA to anticipate net rental income. The family must provide:

- 1) A current executed lease for the property that shows the rental amount or certification from the current tenant
- 2) A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, the PHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

### **7-III.G. RETIREMENT ACCOUNTS**

The standard verification policies found in Part I of this chapter apply to the verification of retirement accounts. LHA will accept written third-party documents supplied by the family as evidence of the status of retirement accounts. The type of original document that will be accepted depends upon the family member's retirement status.

*Before* retirement, LHA 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, LHA 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 LHA 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.

### **7-III.H. INCOME FROM EXCLUDED SOURCES**

LHA will accept the family's self-certification as verification of fully excluded income. The PHA may request additional documentation if necessary to document the income source. The source and amount of partially excluded income as described in Part 1 of this chapter will be verified.



### **7-III.I. ZERO ANNUAL INCOME STATUS**

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.

### **7-III.J. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9) and FR 4/10/06]**

Much of the information needed to verify (amounts received under the Higher Education Act of 1965, amounts received from the institution of higher education, and the amount of a student's tuition) must be provided by the educational institution a student is attending.

For a student subject to having a portion of their student financial assistance included in annual income in accordance with 24 CFR 5.609(b)(9), LHA will request written third-party verification of both the source and the amount. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student. In addition, LHA will request written verification of 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 in Section 7-I.B.

### **7-III.K. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS**

When LHA is required to determine the income eligibility of a student's parents, LHA will request an income declaration and certification of income from the appropriate parent(s) (as determined in Section 3-II.E). The request will be sent 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 LHA. The required information must be submitted (postmarked) within 10 business days of the date of the request or within any extended timeframe approved by the LHA.

Laurinburg Housing Authority reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

## **PART IV: VERIFYING MANDATORY DEDUCTIONS**

### **7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS**

The dependent and elderly/disabled family deductions require only that the Housing Authority verify that the family members identified as dependents or elderly/disabled persons meet the statutory definition. No further verifications are required.

## **7-IV.B. MEDICAL EXPENSE DEDUCTION**

### **Amount of Expense**

The policies related to medical expenses are found in Chapter 6 (6-II.D). The standard verification policies found in Part I of this chapter apply to the verification of medical expenses.

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.

### **Eligible Household**

The medical expense deduction is permitted only for household in which the head, spouse, or co-head is at least 62, or a person with disabilities. LHA will verify the family meets the definition of elderly or disabled family as outlined in Chapter 7.

### **Qualified Expenses**

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 for additional guidance.

### **Unreimbursed Expenses**

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source. If expenses are verified through a third party, the third party must certify that the expenses are not paid or reimbursed from any other source.

### **Expenses Incurred in Past Years**

Families can claim as medical expenses the anticipated costs related to on-going payments of medical bills incurred in past years, if the same expenses have not been deducted in prior years. When anticipated costs are related to on-going payment of medical bills incurred in past years, LHA will verify:

- ❖ The anticipated repayment schedule,
- ❖ The amounts paid in the past, and
- ❖ Whether the amounts to be repaid have been deducted from the family's annual income in past years.

## **7-IV.C. DISABILITY ASSISTANCE EXPENSES**

### **Amount of Expense**

The deduction for disability assistance expenses covers both attendant care and auxiliary apparatus. Because one is a care provider and the other is generally a piece of equipment or the servicing of that equipment, the policy for verifying amounts for attendant care will be somewhat different than for auxiliary apparatus. The PHA needs to provide guidance to staff as to how verification of each is to be handled. The standard verification policies found in Part I of this chapter apply to the verification of disability assistance expenses.

### ***Attendant Care***

The PHA will accept written third-party documents provided by the family. If family-provided documents are not available, 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:

- ❖ Written third-party documents provided by the family, such as receipts or cancelled checks
- ❖ Third-party verification form signed by the provider, if family-provided documents are not available
- ❖ If third-party verification 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:

- ❖ Written third-party documents provided by the family, such as 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
- ❖ Third-party verification form signed by the provider, if family-provided documents are not available
- ❖ 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 (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).

### **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 (See 7-II.F.).

### **Family Member(s) Permitted to Work**

LHA must verify that the expenses claimed actually enable a family member, or members, to work. The person enabled to work could be the person with disabilities but does not have to be. The expense could enable more than one person to work.

LHA will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work. (See 6-II.E.) The family may provide the documentation.

If third-party 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**

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.

## **7-IV.D. CHILDCARE EXPENSES**

### **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. LHA will verify that the child being cared for (including foster children) is under the age of 13 (see chapter 7).

### **Unreimbursed Expense**

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**

LHA must verify that the childcare enables a family member or members to seek work, pursue education, or be gainfully employed. LHA 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 LHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases, LHA will request family-provided verification from the agency of the member's job seeking efforts to date and require the family to submit any reports provided to the other agency. In the event third-party verification is not available, LHA will provide the family with a form on which the family member must record job search efforts. This information will be reviewed at each subsequent reexamination for which this deduction is claimed.

### *Furthering Education*

LHA will request third-party documentation to 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 family may provide the documentation.

### *Gainful Employment*

LHA will seek third-party verification 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. The family may provide the documentation.

### **Allowable Type of Child Care**

LHA will verify that the type of childcare selected by the family is allowable, as described in Chapter 6 (6-II.F). LHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members). LHA verify that 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**

Only reasonable childcare expenses can be deducted. The actual costs the family incurs will be compared with the standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable. If the family presents a justification for costs that exceed typical costs in the area, the LHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

**EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS  
FOR NONCITIZENS [HCV GB, pp. 5-9 and 5-10]**

- All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

**Elderly Noncitizens**

- 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.

**All other Noncitizens**

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

- Form I-551 Alien Registration Receipt Card (for permanent resident aliens)
- Form I-94 Arrival-Departure Record annotated with one of the following:
  - “Admitted as a Refugee Pursuant to Section 207”
  - “Section 208” or “Asylum”
  - “Section 243(h)” or “Deportation stayed by Attorney General”
  - “Paroled Pursuant to Section 221 (d)(5) of the USCIS”

- Form I-94 Arrival-Departure Record with no annotation accompanied by:
  - A final court decision granting asylum (but only if no appeal is taken);
  - 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);
  - A court decision granting withholding of deportation; or
  - A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).

- Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.

- Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.

- 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
- 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 *Federal Register*

## **CHAPTER 8: HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS**

### **INTRODUCTION**

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS). The use of the term "HQS" in this plan refers to the combination of both HUD and LHA-established requirements.

All units must pass an HQS inspection prior to the approval of a lease and at least once every 24 months during the term of the contract, and at other times as needed to determine that the unit meets these standards. HQS standards are required both at initial occupancy and during the term of the lease. These standards apply to the building and premises, as well as the unit. Newly leased units must pass the HQS inspection before the beginning date of the assisted lease and HAP contract. HUD also requires that LHA determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and LHA requirements related to housing quality and rent reasonableness as follows:

Part I. Physical Standards. This part explains HUD's HQS and includes any additional PHA-established standards.

Part II. The Inspection Process. This part describes the types of inspections the PHA will make and the steps that will be followed when units do not meet HQS.

Part III. Rent Reasonableness Determinations. Part III discusses the policies and factors the PHA will use to make the rent reasonableness determination.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15.

### **PART I. PHYSICAL STANDARDS**

#### **8.I.A. GENERAL HUD REQUIREMENTS**

##### **HUD Performance and Acceptability Standards**

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- ❖ Sanitary facilities
- ❖ Food preparation and refuse disposal
- ❖ Space and Security
- ❖ Thermal Environment
- ❖ Illumination and electricity
- ❖ Structure and materials
- ❖ Interior Air Quality
- ❖ Water Supply
- ❖ Lead-based paint
- ❖ Access
- ❖ Site and neighborhood

- ❖ Sanitary condition
- ❖ Smoke Detectors

Additional guidance on these requirements is found in the following HUD resources:

- ❖ Housing Choice Voucher Handbook, Chapter 10.
- ❖ HUD Housing Inspection Manual for Section 8 Housing
- ❖ HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- ❖ HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

### **Tenant Preference Items**

HUD requires the PHA to enforce minimum HQS but also recognizes that certain judgments about the acceptability of the unit are left to the family. For example, the PHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic appearance of the facilities is acceptable. Exhibit 8-2 summarizes those items that are considered tenant preferences.

### **Modifications to Provide Accessibility [24 CFR 100.203; Notice 2003-31]**

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained. [24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the PHA for review.

### **8.I.B. ADDITIONAL LOCAL REQUIREMENTS**

The PHA may impose variations to the HQS as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choices for families. HUD approval is required for variations to the HQS. HUD approval is not required if the variations are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].



## **Thermal Environment [HCV GB p.10-7]**

The heating system in any HCV-assisted unit must be capable of maintaining an interior temperature of 65 degrees Fahrenheit between October 1 and May 1.

### **Clarifications of HUD Requirements**

As permitted by HUD, LHA has adopted the following specific requirements that elaborate on HUD standards:

#### ***Walls***

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

#### ***Windows***

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

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

Window screens must be in good condition (applies only if screens are present).

#### ***Doors***

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

All interior doors must have no holes, have all trim intact, and be openable without the use of a key.

#### ***Floors***

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

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

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

#### ***Sinks***

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

All sinks must have functioning stoppers.

#### ***Toilets***

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

#### ***Security***

If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

### **8.I.C. LIFE-THREATENING CONDITIONS [24 CFR 982.404(a); FR Notice 1/18/17]**

The following are considered life-threatening conditions:

Any condition that jeopardizes the security of the unit

Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling

Natural or LP gas or fuel oil leaks

A fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking or a strong odor is detected with potential for explosion or fire or that results in a health risk if inhaled

Any electrical problem or condition that could result in shock or fire

A light fixture is readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed

A light fixture is hanging by its wires

A light fixture has a missing or broken bulb, and the open socket is readily accessible to the tenant during the day-to-day use of the unit

A receptacle (outlet) or switch is missing or broken and electrical connections or wires are

An open circuit breaker position is not appropriately blanked off in a panel board, main panel board, or other electrical box that contains circuit breakers or fuses

A cover is missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections

Any nicks, abrasions, or fraying of the insulation that exposes conducting wire

Exposed bare wires or electrical connections

Any condition that results in openings in electrical panels or electrical control device enclosures

Water leaking or ponding near any electrical device

Any condition that poses a serious risk of electrocution or fire and poses an immediate life-threatening condition

Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit.

Utilities not in service, including no running hot water

Conditions that present the imminent possibility of injury

Obstacles that prevent safe entrance or exit from the unit

Any components that affect the function of the fire escape are missing or damaged

Stored items or other barriers restrict or prevent the use of the fire escape in the event of an emergency

The building's emergency exit is blocked or impeded, thus limiting the ability of occupants to exit in a fire or other emergency

Absence of a functioning toilet in the unit

Inoperable or missing smoke detectors

Missing or inoperable carbon monoxide detector

Missing, damaged, discharged, overcharged, or expired fire extinguisher (where required)

Gas/oil-fired water heater or heating, ventilation, or cooling system with missing, damaged, improper, or misaligned chimney venting

The chimney or venting system on a fuel-fired water heater is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting or gases

A gas dryer vent is missing, damaged, or is visually determined to be inoperable, or the dryer exhaust is not vented to the outside

A fuel-fired space heater is not properly vented or lacks available combustion air

A non-vented space heater is present

Safety devices on a fuel-fired space heater are missing or damaged

The chimney or venting system on a fuel-fired heating, ventilation, or cooling system is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting of gas

Deteriorating paint as defined at 24 CFR 35.110 in a unit built before 1978 that is to be occupied by a family with a child under six years of age if it would prevent the family from moving into the unit

If an owner fails to correct life-threatening conditions as required, LHA will enforce the HQS in accordance with HUD requirements. See 8-II-G.

If a family fails to correct a family caused life-threatening condition as required, LHA will enforce the family obligations. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless it is determined that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

#### **8-I.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]**

##### *Family Responsibilities*

The family is responsible for correcting the following HQS deficiencies:

- ❖ Tenant-paid utilities not in service
- ❖ Failure to provide or maintain family-supplied appliances
- ❖ Failure to maintain the unit and premises in decent and sanitary conditions that could result in potential health and/or safety concerns
- ❖ Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. *Normal wear and tear* is defined as items that could not be charged against the tenant's security deposit under state law or court practice.

### *Owner Responsibilities*

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g. vermin infestation). However, if the family's actions constitute a serious or repeated violation the owner may take legal action to evict the family.

#### **8-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL [24 CFR 35.1225; FR Notice 1/13/17; Notice PIH 2017-13]**

If a PHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than six years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level, the PHA must complete an environmental investigation of the dwelling unit within 15 calendar days after being notified by a public health department or other medical health care provider. The environmental investigation must be completed in accordance with program requirements, and the result of the environmental investigation must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the environmental investigation report from the PHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330; 40 CFR 745.227]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and the PHA will take action in accordance with Section 8-II.G.

PHA reporting requirements, and data collection and record keeping responsibilities related to children with an elevated blood lead level are discussed in Chapter 16.

#### **8-I.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.401, 24 CFR 982.403]**

- 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 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

## **PART II. THE INSPECTION PROCESS**

### **8-II.A. OVERVIEW [24 CFR 982.405]**

The Laurinburg Housing Authority will inspect all units to ensure that they meet Housing Quality Standards (HQS). No unit will be initially placed on the Section 8 Existing Program unless the HQS is met. Units will be inspected at least annually, and at other times as needed, to determine if the units meet HQS. Should budget restraints or other unforeseen circumstances transpire, LHA reserves the right to perform Biennial HQS Inspections and/or use a Remote Video Inspection Process that follows Guidance PIH Notice 2020-31.

#### **Types of Inspections**

The following types of inspections are conducted as needed:

*Initial Inspections:* LHA conducts initial inspections in response to a request from the family to approve a unit for participate in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP contract.

*Annual/Biennial Inspections:* HUD requires LHA to inspect each unit under lease at least annually or biennially to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but may also be conducted separately.

*Special Inspections:* A special inspection may be requested by the owner, family, or a third party because of problems identified with a unit between annual inspections.

*Quality Control Inspections:* HUD requires that a sample of units be re-inspected by a supervisor or other qualified individual to ensure that all inspectors are enforcing HQS correctly and uniformly.

#### **Inspection of PHA-owned Units [24 CFR 982.352(b)]**

The PHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a PHA-owned unit. A PHA-owned unit is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of each inspection to the family and the PHA. The independent agency must be approved by HUD and 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).

#### **Inspection Costs [Notice PIH 2016-05]**

The PHA may not charge the family for unit inspections or re-inspections [24 CFR 982.405(e)]. In the case of inspections of PHA-owned units, the PHA may compensate the independent agency from ongoing administrative fee for inspections performed. The PHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

The PHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. Although the PHA may charge a reasonable fee to owners for re-inspections in two situations: when the owner notifies

the PHA that a repair has been made but the deficiency has not been corrected, and when the time for repairs has elapsed and the deficiency has not been corrected, the Laurinburg Housing Authority will not charge a fee for failed inspections. Fees may not be imposed for tenant-caused damages, for cases in which the inspector could not gain access to the unit, or for new deficiencies discovered during a re-inspection.

### **Remote Video Inspections (RVIs) [Notice PIH 2020-31]**

As an alternative to some or all on-site inspections, the PHA may, but is not required to, perform HQS inspections from a remote location using video streaming technology and a proxy at the inspection site. Since there may be some circumstances in which the application of technology provides insufficient information or evidence to allow the PHA to make appropriate determinations about whether a condition violates HQS, Notice PIH 2020-31 requires that if a PHA chooses to implement RVIs, the PHA should have policies and procedures in place to address such limitations.

The Laurinburg Housing Authority does not intend to conduct HQS inspection using RVI. However, during emergency situations, such a pandemic or natural disaster, we reserve the right to develop and implement RVI policies and procedures.

### **Notice and Scheduling**

The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice [24 CFR 982.551(d)]. Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life-threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 8:00 a.m. and 5:30 p.m. Generally, inspections will be conducted on business days only. In the case of a life-threatening emergency, LHA will give as much notice as possible, given the nature of the emergency.

### **Owner and Family Inspection Attendance**

When a family occupies the unit at the time of inspection, an adult family member must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, LHA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted, but is not required.

## **8-II.B. INITIAL HQS INSPECTION [24 CFR 982.401(a)]**

### **Initial Inspections [FR Notice 1/18/17]**

The Laurinburg Housing Authority will not approve a lease or enter into a HAP contract until the unit passes the HQS inspection.

### **Timing of Initial Inspections**

To the extent practicable, LHA will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within ten (10) business days of submission of the Request for Tenancy Approval (RTA).

## **Inspection Results and Re-inspections**

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a period to correct them. If requested by the owner, the period for correcting the deficiencies may be extended by LHA for good cause. LHA will re-inspect the unit within five (5) business days of the date the owner provides notification that the required corrections have been made.

If the time for correcting the deficiencies (or any approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, the owner and the family will be notified that the unit has been rejected and that the family must search for another unit. LHA may agree to conduct a second re-inspection, for good cause, at the request of the family and owner.

Following a failed re-inspection, the family may submit a new Request for Tenancy Approval after the owner has made repairs, if they are unable to locate another suitable unit.

## **Utilities**

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

If utility service is not available for testing at the time of the initial inspection, the PHA will allow the utilities to be placed in service after the unit has met all other HQS requirements. The PHA will re-inspect the unit to confirm that utilities are operational before the HAP contract is executed by the PHA.

## **Appliances [Form HUD-52580]**

If the family is responsible for supplying the stove and/or refrigerator, LHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before the HAP contract is executed. The HAP contract will be executed based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.

## **8.II.C. ANNUAL/BIENNIAL HQS INSPECTIONS [24 CFR 982.405 and 982.406; Notice PIH 2016-05]**

Each unit under HAP contract will be inspected annually within 12 months of the last full HQS inspection.

Should budget constraints or other unforeseen circumstances require, LHA reserves the right to perform inspections biennially within 24 months of the last full HQS inspection. If a unit is found to have a life-threatening HQS deficiency, the owner of that unit will be required to participate in annual inspections for all units for the period of 24 months before being returned to biennial inspections. This does not apply to life-threatening HQS deficiencies caused by tenants. One or more substantiated complaints will also require the owner of that unit to participate in annual inspections for all units for the period of 24 months before being returned to biennial inspections. The PHA reserves the right to require annual inspections of any owner at any time.

## **Scheduling the Inspection**

If an adult family member cannot be present on the scheduled date, the family should request to reschedule the inspection. LHA and family will agree on a new inspection date that generally should take place within five (5) business days of the originally scheduled date. LHA may schedule an inspection more than five (5) business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, LHA will automatically schedule a second inspection. If the family misses two scheduled inspections without approval, LHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

### **8-II.D. SPECIAL INSPECTIONS [24 CFR 982.405(g)]**

The PHA will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit. If a participant or government official reports a life-threatening condition, which the owner would be required to repair within 24 hours, the inspection of the unit must be performed within 24 hours of notification. If the reported condition is not life threatening, the inspection will be scheduled within 15 days of notification.

During a special inspection, LHA generally will inspect only those deficiencies that were reported. However, the inspector will record any additional HQS deficiencies that are observed and will require the responsible party to make the necessary repairs. If the annual inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled LHA may elect to conduct a full annual inspection.

### **8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b), HCV GB p. 10-32]**

HUD requires a LHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS. The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include each type of inspection (initial, annual, and special), inspections completed by each inspector, and units from a cross-section of neighborhoods.

## **8.II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT**

### **Notification of Corrective Actions**

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS deficiencies, LHA will determine (1) whether or not the deficiency is a life-threatening condition and (2) whether the family or owner is responsible.

When life-threatening conditions are identified, LHA will immediately notify both parties by telephone, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the notice.

When deficiencies that are not life threatening are identified, LHA will send the owner and the family a written notification of the inspection results within five (5) business days of the



inspection. The written notice will specify who is responsible for correcting the violation, and the period within which the deficiency must be corrected. Generally, not more than 30 days will be allowed for the 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 approved extension), the owner's HAP will be abated in accordance with LHA policy (see 8-II.G.). Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified period (or any approved extension, if applicable) the family's assistance will be terminated in accordance with LHA policy (see Chapter 12).

### **Extensions**

For conditions that are life threatening, LHA cannot grant an extension to the 24-hour corrective action period. For conditions that are not life threatening, LHA may grant an exception to the required periods for correcting the violation, if it is determined that an extension is appropriate.

Extensions will be granted in cases where LHA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control.

Reasons may include, but are not limited to:

- ❖ A repair cannot be completed because required parts or services are not available.
- ❖ A repair cannot be completed because of weather conditions.
- ❖ A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case-by-case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

### **Re-inspections**

LHA will conduct a re-inspection immediately following the end of the corrective period, or any 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, a notice of abatement will be sent to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with LHA policies. If the inspector is unable to gain entry to the unit in order to conduct the scheduled re-inspection, LHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

## **8.II.G. ENFORCING OWNER COMPLIANCE**

If the owner fails to maintain the dwelling unit in accordance with HQS, LHA must take prompt and vigorous action to enforce the owner obligations.

## **HAP Abatement**

The effective date of all HAP abatements will be effective the first of the month following the expiration of the LHA specified correction period (including any extension). The maximum length of time that HAP may be abated is 45 days. An extension may be obtained upon Housing Authority approval.

If the owner completes corrections and notifies LHA before the termination date of the HAP contract, the termination notice may be rescinded if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection. LHA will inspect abated units within five (5) business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

## **Tenant Rights After HAP Abatement**

HAP abatements occur when a landlord fails to make required repairs in the specified timeframe. The tenant must obtain a Request for Tenancy within 5 days from the date of HAP abatement.

## **HAP Contract Termination**

The maximum length of time that HAP may be abated is 90 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.

Reasonable notice of HAP contract termination by the PHA is 30 days.

## **8.II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]**

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed (and any extensions), the family's assistance will be terminated, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

## **PART III. RENT REASONABLENESS [24 CFR 982.507]**

### **8-III.A. OVERVIEW**

Except in the case of certain LIHTC- and HOME-assisted units, no HAP contract can be approved until the PHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

### **PHA-Owned Units [24 CFR 982.352(b)]**

In cases where an HCV family is receiving assistance in a PHA-owned unit, the PHA must obtain the services of an independent entity to determine rent reasonableness in accordance with

program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A PHA-owned unit is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the PHA. The independent agency must be approved by HUD, and 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).

### **8-III.B.WHEN RENT REASONABLNESS DETERMINATIONS ARE REQUIRED**

#### **Owner-Initiated Rent Determinations**

LHA **must** ensure that rents charged by owners to Housing Choice Voucher program participants are reasonable and **must** compare the rent for the voucher unit to rents for similar unassisted units in the marketplace [24 CFR 982.507(b)]. LHA **must** make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment. The owner **must not** change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family.

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, LHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than four (4) units. In evaluating the proposed rents in comparison to other units on the premises, the LHA will consider unit size and length of tenancy in the other units.

LHA will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination in writing. All rents adjustments will be effective the first of the month following 60 days after the receipt of the owner's request or on the date specified by the owner, whichever is later.

#### **PHA- and HUD-Initiated Rent Reasonableness Determinations**

HUD requires the PHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 10 percent decrease in the fair market rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the PHA to make a determination at any other time. The Housing Authority may decide that a new determination of rent reasonableness is needed at any time.

In addition to the instances described above, LHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) it is determined that the initial rent reasonableness determination was in error or (2) that the information provided by the owner about the unit or other units on the same premises was incorrect.

#### **LIHTC and HOME-Assisted Units [24 CFR 982.507(c)]**

For units receiving low-income housing tax credits (LIHTCs) or units assisted under HUD's HOME Investment Partnerships (HOME) Program, a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program

regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the PHA for the unit size involved.

### **8-III.C. HOW COMPARABILITY IS ESTABLISHED**

#### **Factors to Consider**

HUD requires that the Housing Authority take into consideration the factors listed below when determining rent comparability. LHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- ❖ Location and age (within 30 miles of the target unit to the extent possible)
- ❖ Unit size including the number of rooms and square footage of rooms
- ❖ The type of unit including construction type (e.g. single family, duplex, garden, low-rise, high-rise)
- ❖ The quality of the units including the quality of the original construction, maintenance, and improvements made
- ❖ Amenities, services, and utilities included in the rent.

#### **Units that Must Not Be Used for Comparability**

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by ordinance. For additional guidance, [Notice PIH 2002-22, Notice PIH 2005-20, and Notice PIH 2020-19].

*Note:* Notice PIH 2020-19, issued August 21, 2020, provides further guidance on the issue of what constitutes an assisted unit.

#### **Rents Charged for Other Units on the Premises**

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting the PHA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give the PHA information regarding rents charged for other units on the premises.

## **8-III.D. PHA RENT REASONABLENESS METHODOLOGY**

### **How Market Data Is Collected**

LHA will collect and maintain data on market rents in its jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

### **How Rents are Determined**

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. Typically, units may be similar, but not exactly like the unit proposed for HCV assistance. Therefore, upward and downward dollar adjustments for differences between the proposed HCV unit and the comparable to determine the reasonable rent for the HCV unit may be made.

The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas). Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).

The adjustment must reflect the rental value of the difference—not its construction costs (e.g., it might cost \$20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rental units are presumed to have functioning roofs).

When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of \$500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows:  $\$500 \times 11 \text{ months} = 5500 / 12 \text{ months} = \text{actual monthly rent of } \$488$ .

The PHA will notify the owner of the rent the PHA can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The PHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within five business days of the PHA's request for information or the owner's request to submit information.

### **Owner Submission of Market Data**

LHA will notify the owner of the rent amount that can be approved based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. LHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within five (5) business days of the LHA's request for information or the owner's request to submit information.

## **EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS**

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

### **Sanitary Facilities**

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

### **Food Preparation and Refuse Disposal**

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

### **Space and Security**

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

### **Thermal Environment**

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

### **Illumination and Electricity**

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

### **Structure and Materials**

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

## **Interior Air Quality**

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one openable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

## **Water Supply**

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

## **Lead-Based Paint**

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities within 30 days when identified by the PHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint
- Maintain covered housing without deteriorated paint if there is child under six in the family

For units occupied by elevated blood lead level (lead poisoned) children under six years of age, an environmental investigation must be conducted (paid for by the PHA). If lead hazards are identified during the environmental investigation, the owner must complete hazard reduction activities within 30 days.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

## **Access**

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

## **Site and Neighborhood**

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

**Sanitary Condition**

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

**Smoke Detectors**

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

**Hazards and Health/Safety**

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.



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| <b>EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS<br/>RELATED TO HOUSING QUALITY</b> |
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Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities.* The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
- *Food Preparation and Refuse Disposal.* The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
- *Space and Security.* The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.
- *Energy conservation items.* The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
- *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.

- *Structure and Materials.* Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- *(Indoor Air.* Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- *(Sanitary Conditions.* The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- *(Neighborhood conditions.* Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

## CHAPTER 9: LEASING

### INTRODUCTION

This chapter covers the lease-up process from the family's submission of a Request for Tenancy to the execution of the HAP contract.

LHA's program operations are designed to utilize available resources in a manner that is efficient and provides eligible families timely assistance based on the number of units that have been budgeted.

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) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by the 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)]

### 9-I.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 PHA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of the PHA's policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, the PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. The PHA must also inform the owner or manager of their rights and obligations under the Violence against Women Act of 2013 (VAWA) [24 CFR 5.2005(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)(1)].

The PHA is permitted, but not required, to offer the owner other information in the PHA's possession about the tenancy history or drug trafficking of family members [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)].

The PHA may not disclose to the owner any confidential information provided 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(b)(4)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. LHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. Owners will be informed of their responsibility for screening and selection for tenancy.

### **9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]**

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request that the Housing Authority approve the assisted tenancy in the selected unit.

Both the family and the owner must sign the Request for Tenancy (RTA). Completed RTA (including the proposed dwelling lease) must be submitted as hard copies, in-person, by mail, or by fax. The family may not submit, and the PHA will not process, more than one (1) RTA at a time.

When the family submits the RTA, the PHA will review the RTA for completeness. If the RTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RTA, the PHA will notify the family and the owner of the deficiencies. Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, or by fax. The PHA will not accept missing information over the phone.

When the family submits the RTA and proposed lease, the PHA will also review the terms of the RTA for consistency with the terms of the proposed lease. If the terms of the RTA are not consistent with the terms of the proposed lease, the PHA will notify the family and the owner of the discrepancies. Corrections to the terms of the RTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. The PHA will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, 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.

### **9-I.C. OWNER PARTICIPATION**

LHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the Housing Authority may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues.

Chapter 13 offers a full discussion of owner qualification to participate in the HCV program.

### **9-I.D. ELIGIBLE UNITS**

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher holder family may choose any available rental dwelling unit on the market in LHA's jurisdiction. This includes the dwelling unit the family is currently living in.

#### **Ineligible Units [24 CFR 982.352(a)]**

LHA 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 HCV program. LHA has eligible units available for leasing under the voucher program.

Voucher holder families will be informed of this housing at the time of the briefing and will also 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 LHA-owned unit without any pressure or steering by the LHA.

#### **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. This is a PHA decision and specific specialized housing types are not required to be used. However, even where the PHA has opted to disallow use of particular special housing types, the PHA must allow for the use of a special housing type if needed as a reasonable accommodation for a person with disabilities.

Special Housing Types are discussed in Chapter 15.

#### **Duplicative Assistance [24 CFR 982.352(c)]**

HCV assistance cannot be approved if approval would result in the family receiving a duplicate subsidy. Prior to admission into the program, the Housing Authority **must** search for each family member in the EIV Existing Tenant Search.

#### **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). Chapter 8 offers a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

## **Unit Size**

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements. 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. Chapter 5 offers a full discussion of subsidy standards.

## **Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]**

In order to be eligible, the dwelling unit must have a reasonable rent. Chapter 8 offers a full discussion of rent reasonableness and the rent reasonableness determination process

## **Rent Burden [24 CFR 982.508]**

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the 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. Chapter 6 offers a full discussion of calculation of gross rent, the use of payment standards, and calculation of monthly-adjusted income.

## **9-I.E. LEASE AND TENANCY ADDENDUM**

The family and the owner must execute and enter into a written dwelling lease for the assisted unit. This written lease is a contract between the tenant family and the owner. LHA is not a party to this contract. The tenant must have legal capacity to enter a lease under State and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)].

## **Lease Form and Tenancy Addendum [24 CFR 982.308]**

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner will be encouraged to obtain a standard lease form from a local realtor or other reliable source. LHA does not provide a model or standard dwelling lease for owners to use in the HCV program.

## **Lease Information [24 CFR 982.308(d)]**

The assisted dwelling lease **must** contain all of the required information as listed below:

- ❖ The names of the owner, tenant, and all family members;
- ❖ The unit rented (address, apartment number, and any other information needed to identify the contract unit);
- ❖ The term of the lease (initial term and any provisions for renewal);
- ❖ The amount of the monthly rent to owner; and
- ❖ A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family.

If the tenant and owner agree to any changes in the lease, the changes **must** be in writing and the owner **must** immediately give the Housing Authority a copy of such changes. The lease, including any changes, **must** be in accordance with the requirements set forth above [24 CFR 982.308 (g)].

### **Term of Assisted Tenancy**

The PHA will not approve an initial lease term of less than one (1) year. During the initial lease term, the owner may not raise the rent to owner. The lease must include any provisions for its renewal [24 CFR 982.308(d)(3)]. The HAP contract term runs concurrently with the lease term. If the lease terminates, the HAP contract terminates. Whenever the owner elects to execute a new lease, a new HAP contract is also required. The term of the new lease or contract for a new unit may begin in the same month in which the participant moves out of their previous assisted unit. This is not considered a duplicative subsidy.

### **Security Deposit [24 CFR 982.313 (a) and (b)]**

Owners may collect a security deposit equal to the first month's rent.

### **Separate Non-Lease Agreements between Owner and Tenant**

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**

If the dwelling lease is incomplete or incorrect, LHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by fax. LHA will not accept missing and corrected information over the phone. Because the initial leasing process is time-sensitive, LHA will attempt to communicate with the owner and family by phone, fax, or email. Mail will be used 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.

### **9-I.F. TENANCY APPROVAL [24 CFR 982.305]**

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, the PHA must ensure that all required actions and determinations have been completed and must promptly notify the family and owner whether the assisted tenancy is approved.

LHA will complete its determination within 10 business days of receiving all required information. If the terms of the RTA/proposed lease are changed for any reason, including but not limited to negotiation with the Housing Authority, LHA will obtain corrected copies of the RTA and proposed lease, signed by the family and the owner.

Corrections to the RTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. The PHA will not accept corrections over the phone.

If it is determined that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. The PHA will instruct the owner and family of the steps that are necessary to obtain approval of the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher. If the tenancy is not approvable due to rent affordability or rent reasonableness, LHA will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

### **9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305]**

The HAP contract is a written agreement between the Housing Authority and the owner of the dwelling unit. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of the family, and the owner agrees to comply with all program requirements as stated in the HAP contract.

Owners who have not previously participated in the HCV program must attend a meeting with the LHA in which the terms of the Tenancy Addendum and the HAP contract will be explained. This requirement may be waived on a case-by-case basis, if it is determined that the owner is sufficiently familiar with the requirements and responsibilities under the HCV program.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to LHA. The Housing Authority will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and LHA will execute the HAP contract. The HAP contract will not be executed until the owner has submitted IRS form W-9. The owner will receive a copy of the executed HAP contract.

As required under VAWA 2013, once the HAP contract and lease have been executed and the family has been admitted to the program, LHA will notify families of their rights under VAWA



by providing all families with a copy of the domestic violence certification form (HUD-5382) as well as the VAWA notice of occupancy rights (form HUD-5380).

**9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]**

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the Housing Authority a copy of such changes.

Where the owner is requesting a rent increase, the LHA will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination in writing. Rent increases will go into effect on the first of the month following the 60-day period after the owner notifies the LHA of the rent change or on the date specified by the owner, whichever is later.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

## **CHAPTER 10: MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY**

### **INTRODUCTION**

Freedom of choice is a hallmark of the housing choice voucher program. In general, therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and LHA policies governing moves within or outside of the Laurinburg Housing Authority's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under the 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 under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into the PHA's jurisdiction. This part also covers the special responsibilities that the PHA has under portability regulations and procedures.

The primary regulations governing moves are found at 24 CFR 982.354. The primary regulations governing portability are found at 24 CFR 982.353 and 982.355. Additional HUD requirements on portability are found in Notice PIH 2012-42.

### **PART I: MOVING WITH CONTINUED ASSISTANCE**

#### **10-I.A. ALLOWABLE MOVES**

HUD has established permissible moves with continued assistance in the housing choice voucher (HCV) program for participant families. These conditions apply to all moves by participant families, whether they occur within a LHA's jurisdiction or outside it under portability. Permissible moves include:

- ❖ To qualify as a portable family, the participant must reside in LHA's jurisdiction for the initial term of the lease, with the exceptions of families or family members who are victims of Domestic Violence or disabled families or family members needing a reasonable accommodation.
- ❖ 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)]. 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 they were imminently threatened by harm from further violence if they 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).

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 in accordance with section 16-IX.D of this plan.

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 [24 CFR 982.354(b)(1)(i)].
- ❖ The PHA determines that the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, the 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)]

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, LHA will document the waiver in the family's file.

LHA 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, LHA will ensure the victim is eligible to receive continued assistance based on the citizenship or immigration status of the victim. LHA 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.

## **10-I.B. RESTRICTIONS ON MOVES**

### **Denial of Moves**

#### ***Insufficient Funding***

LHA will deny a family permission to move on grounds that sufficient funding for continued assistance will not be available if (a) the move is initiated by the family, not the owner or the PHA; (b) the PHA can demonstrate that the move will, in fact, result in higher subsidy costs (c) the PHA can demonstrate, in accordance with the policies in Part VIII of Chapter 16, that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs; and (d) for portability moves, the receiving PHA is not absorbing the voucher.

If the PHA does not have sufficient funding for continued assistance, but the family must move from their unit (e.g. the unit failed HQS), the family may move to a higher cost unit if the move is within LHA's jurisdiction. LHA, however, will not allow the family to move under portability in this situation if the family wishes to move to a higher cost area.

For both moves within the jurisdiction of LHA and outside under portability, LHA will not deny a move due to insufficient funding if LHA previously approved the move and subsequently experienced a funding shortfall if the family cannot remain in their current unit. LHA will rescind the voucher in this situation if the family will be allowed to remain in their current unit.

A list of families whose moves have been denied due to insufficient funding will be maintained. LHA will keep the family's request for portability open indefinitely, and when funds become available, the families on this list will take precedence over families on the waiting list. LHA will use the same procedures for notifying families with open requests to move when funds become available as it uses for notifying families on the waiting list (see section 4-III.D). The PHA will inform the family of its policy regarding moves denied due to insufficient funding in a letter to the family at the time the move is denied.

#### ***Mandatory Denial of a Family Request to Move***

In accordance with 24 CFR 982.353(3)(1) and PIH Notice 2016-09(6)(a), the Laurinburg Housing Authority will deny the move if the family is not income eligible in the receiving PHA's jurisdiction. Moves will also be denied in accordance with 24 CFR 982.353(b) if the family has moved out of an assisted unit and is in violation of the lease in doing so. The PHA will consider the following factors when denying a move due to a lease violation:

- Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault or

Stalking;

- Reasonable Accommodation in accordance with Fair Housing and Equal Opportunity Requirements; or
- Harassment in housing or housing-related transactions on the basis of race, color, religion, sex, disability, familial status, and national origin.

### ***Grounds for Denial or Termination of Assistance***

If there are grounds for denying or terminating a family's assistance, LHA will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. 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.

In determining whether to deny permission to move, LHA will consider the criteria under federal regulations at 24 CFR 982.552(c)(1) and applicable alternative requirements. These include:

- ❖ The family has violated any family obligations under the program.
- ❖ Any member of the family has been evicted from federally assisted housing in the last five years.
- ❖ A PHA has ever terminated assistance under the program for any member of the family.
- ❖ Any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program (see also 24 CFR 982.553(a)(1)).
- ❖ The family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 U.S. Housing Act.
- ❖ The family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
- ❖ The family breaches an agreement with the PHA to pay amounts owed to a PHA or amounts paid to an owner by a PHA. (The PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.)
- ❖ The family has engaged in or threatened abusive or violent behavior toward PHA personnel.
- ❖ A welfare-to-work (WTW) family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.
- ❖ The family has been engaged in criminal activity or alcohol abuse as described in 24 CFR 982.553.

The PHA will also consider the same extenuating circumstances as would be considered when determining whether to deny or terminate assistance under 24 CFR 982.552(c)(2). These include:

LHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

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

In determining whether to deny a move for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, LHA will consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the PHA may require the applicant or 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.

If the family includes a person with disabilities, the decision concerning such action is subject to consideration of reasonable accommodation in accordance with 24 CFR 8. All admission and eviction actions will be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

#### **Restrictions on Elective Moves [24 CFR 982.354(c)]**

Elective moves during the family's initial lease term will be denied. This policy applies to moves within the LHA's jurisdiction or outside it under portability. LHA 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 LHA's jurisdiction.

Exceptions to this policy will be considered 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 LHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

Once LHA has processed and transmitted the portability documents to the receiving PHA, the tenant may request to port to a different PHA within the first 60 days of the term of the portability voucher. After the portability documents have been submitted to the receiving PHA, the porting tenant can only make one additional request to change the location. This request must be made within the first 60 days of the term of the portability voucher. At the conclusion of the 60-day period, a final decision must be made as to the portability location. No additional changes will be granted.

### **10-I.C. MOVING PROCESS**

#### **Notification**

If a family wishes to move to a new unit, the family must notify the PHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.354(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 where the family wishes to move [24 CFR 982.354(d)(2)]. The notices must be in writing [24 CFR 982.5].

### **Approval**

Upon receipt of a family's notification that it wishes to move, LHA will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. The family will be notified in writing of its determination within 10 business days following receipt of the family's notification.

### **Residual Voucher**

If the head of household vacates the unit, any household members who were not part of the original lease must have been added to the lease and occupied the subsidized unit for a minimum of 12 months prior to the departure of the head of household to be eligible for the residual. If the individual is not a part of the original lease or has not been on the lease for a period of at least 12 months, the individual is not eligible to maintain the residual voucher. This policy is intended to preserve the integrity of the subsidy program by honoring the families who are waiting on the waitlist.

### **Reexamination of Family Income and Composition**

For families approved to move to a new unit within the LHA's jurisdiction, a new annual reexamination will be performed in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of LHA's jurisdiction under portability, LHA will follow the policies set forth in Part II of this chapter.

### **Voucher Issuance and Briefing**

A new voucher will be issued to families approved to move to a new unit within LHA's jurisdiction within 10 business days of the PHA's written approval to move. No briefing is required for these families. The policies set forth in Chapter 5 on voucher term, extension, and expiration will apply. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and LHA approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the LHA's jurisdiction under portability, the policies set forth in Part II of this chapter will be followed.

### **Housing Assistance Payments [24 CFR 982.311(d)]**

When a family moves out of an assisted unit, LHA may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

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

## **Zero HAP Families Who Wish to Move [24 CFR 982.455]**

If a zero HAP family requests to move to a new unit, the family may request a voucher to move. However, if no subsidy will be paid at the unit to which the family requests to move, the PHA will not enter into a HAP contract on behalf of the family for the new unit.

## **PART II: PORTABILITY**

### **10-II.A. OVERVIEW**

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [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 fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance out of its own program funds, and the initial PHA has no further relationship with the family.

The initial PHA must contact the receiving PHA via email or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the initial PHA's voucher. Based on the receiving PHA's response, the initial PHA must determine whether they will approve or deny the portability request [Notice PIH 2016-09].

PHAs commonly act as both the initial and receiving PHA because families may move into or out of their jurisdiction under portability. Each role involves different responsibilities. The PHA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family.

In administering portability, the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required forms [24 CFR 982.355(e)(5)].

PHAs must also comply with billing and payment deadlines. HUD may reduce an administrative fee to an initial or receiving PHA if the PHA does not comply with HUD portability requirements [24 CFR 982.355(e)(7)].

The same PHA commonly acts as the initial PHA for some families and as the receiving PHA for others. Each role involves different responsibilities. LHA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family. This brief section provides an overview of portability and explains that, under the portability procedures, the PHA sometimes wears the hat of initial PHA and sometimes wears the hat of receiving PHA. These two distinct roles require different policies and therefore are dealt with separately in two subsections.



## **10-II.B. INITIAL PHA ROLE**

The provisions in this section apply when LHA is acting as the initial PHA for a family moving out of its jurisdiction into the jurisdiction of another PHA (the receiving PHA) under the portability procedures. To qualify as a portable family, the participant must reside in LHA's jurisdiction for the initial term of the lease. The rules for participant families and applicant families differ in some ways; therefore, the policies adopted for these families in some cases need to be different.

### **Allowable Moves under Portability**

Whereas the general rules on moves apply primarily to participant families, the rules on moves out of a PHA's jurisdiction under portability apply both to participant families and applicant families that have been issued a voucher. The income eligibility rules for applicant and participant families differ.

#### ***Applicant Families***

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, the initial PHA will follow the policies established in section 10-I.B of this chapter. If the move is denied due to insufficient funding, LHA will notify HUD in writing within 10 business days of the PHA's determination to deny the move.

If neither the head of household nor the spouse/co-head of an applicant family had a domicile (legal residence) in LHA jurisdiction at the time that the family's initial application for assistance was submitted, the family must lease a unit within the LHA's jurisdiction for at least 12 months before requesting portability.

The PHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or reasons related to domestic violence, dating violence, sexual assault, or stalking.

#### ***Participant Families***

LHA will determine whether a participant family may move out of its jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-I.B of this chapter. LHA will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

### **Determining Income Eligibility**

#### ***Applicant Families***

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d) (3)]. The family must specify the area to which the family wishes to move [Notice 2004-12]. The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c) (1)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2004-12].

If neither the head of household nor the spouse/co-head of an applicant family had a domicile (legal residence) in LHA jurisdiction at the time that the family's initial application for assistance

was submitted, the family must lease a unit within the LHA's jurisdiction for at least 12 months before requesting portability

### ***Participant Families***

The income eligibility of a participant family is not re-determined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d) (2), 24 CFR 982.355(c)]

### **Reexamination of Family Income and Composition**

For a participant family approved to move out of its jurisdiction under portability, LHA generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

LHA will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

### **Briefing**

No formal briefing will be required for a participant family wishing to move outside the LHA's jurisdiction under portability. However, the PHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5).

LHA will provide the name, address, and phone of the contact for the PHAs in the jurisdiction to which they wish to move. The family must select the receiving PHA, however LHA will provide a listing of the tenant-based HCV program operations in the area which the family desire to port.

The PHA will advise the family that they will be under the receiving PHA's policies and procedures, including screening, subsidy standards, voucher extension policies, and payment standards.

### **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 set forth in Chapter 5.

For participating families approved to move under portability, LHA will issue a new voucher within 10 business days after the move has been approved. The initial term of the voucher will be 180 days.

### **Voucher Extensions and Expiration**

LHA will approve **no** extensions to a voucher issued to family porting out of the its jurisdiction except under the following circumstances:

- (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA,
- (b) the family decides to return to the initial PHA's jurisdiction and search for a unit there, or
- (c) the family decides to search for a unit in a third PHA's jurisdiction. In such cases, the

policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the initial PHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 180 days following the expiration date of the initial PHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

### **Preapproval Contact with the Receiving PHA**

LHA will use e-mail, when possible, to contact the receiving PHA regarding whether the receiving PHA will administer or absorb the family's voucher.

### **Initial Notification to the Receiving PHA**

Because the portability process is time-sensitive, LHA will notify the receiving PHA by phone, fax, or e-mail to expect the family. The initial PHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, telephone number, fax and e-mail address of the staff person responsible for working with incoming portable families and procedures related to appointments for voucher issuance. The PHA will pass this information along to the family. LHA will also ask for the name, address, telephone number, fax and e-mail of the person responsible for processing the billing information.

### **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 I filled out [Notice PIH 2016-09]
- A copy of the family's voucher [Notice PIH 2016-09]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(7), Notice PIH 2016-09]

Copies of the income verifications backing up the form HUD-50058, including a copy of the family's current EIV data [24 CFR 982.355(c)(7), Notice.

In addition to these documents, LHA will provide the following information, if available, to the receiving PHA:

- ❖ Social security numbers (SSNs)
- ❖ Documentation of SSNs for all nonexempt household members whose SSNs have not been verified through the EIV system
- ❖ Documentation of legal identity
- ❖ Documentation of citizenship or eligible immigration status
- ❖ Documentation of participation in the earned income disallowance (EID) benefit
- ❖ Documentation of participation in a family self-sufficiency (FSS) program

LHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

#### **Initial Billing Deadline [Notice PIH 2016-09]**

If the LHA has not received an initial billing notice from the receiving PHA within the billing deadline, it will contact the receiving PHA to inform them that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. LHA will send the receiving PHA a written confirmation of its decision by mail.

LHA will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

#### **Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2016-09]**

LHA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA provides notification 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

#### **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. (For PHA policies on denial and termination, see Chapters 3 and 12, respectively.)

### **10-II.C. RECEIVING PHA ROLE**

receiving PHA must provide assistance for the family [24 CFR 982.355(10)]. HUD may determine in certain instances that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families [24 CFR 982.355(b)].

Administration of the voucher must be in accordance with the receiving PHA's policies. This requirement also applies to policies of Moving to Work agencies. The receiving PHA procedures and preferences for selection among eligible applicants do not apply to the family, and the receiving PHA waiting list is not used [24 CFR 982.355(c)(10)]. The family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(c)(12)], and the receiving PHA's policies on extensions of the voucher term apply [24 CFR 982.355(c)(14)].

#### **Responding to Initial PHA's Request [24 CFR 982.355(c)]**

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 do not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e)(2)].

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 PIH 2004-12].

When a portable family requests 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 receiving 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]. (See later under "Absorbing a Portable Family" for more on this topic.)

### **Briefing**

LHA will not require the family to attend a briefing. Information will be provided to the family with a briefing packet (as described in Chapter 5) and, in an individual briefing, will orally inform the family about the payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

### **Income Eligibility and Reexamination**

For any family moving into its jurisdiction under portability, LHA will conduct a new reexamination of family income and composition. However, LHA will not delay issuing the family a voucher for this reason nor will there be a delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the PHA cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, LHA will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

### **Voucher Issuance**

When a family ports into its jurisdiction, LHA 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 LHA's procedures. The family's information will be updated when verification has been completed.

### ***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].

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 receiving PHA's voucher will expire 30 calendar days from the expiration date of the initial PHA's voucher. 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.

### ***Voucher Extensions [24 CFR 982.355(c)(14), Notice 2016-09]***

LHA generally will not extend the term of the voucher that it issues to an incoming portable family unless it plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E of this plan.

LHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

### ***Voucher Suspensions [24 CFR 982.303, 24 CFR 982.355(c)(15)]***

Regulations now require PHAs to suspend the term of the voucher 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.

### ***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)(8)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 CFR 982.355(e)(5), Notice PIH 2004-12]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher.")

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 2004-12].

### **Administering a Portable Family's Voucher**

#### ***Portability Billing [24 CFR 982.355(e)(3)]***

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***

LHA will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.

#### ***Ongoing Notification Responsibilities [Notice PIH 2016-09, HUD-52665]***

**Annual Reexamination.** 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

LHA will send a copy of the updated HUD-50058 by regular mail no later than 10 business days after the effective date of the reexamination.

**Change in Billing Amount.** The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. 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 2016-09]***

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- ❖ 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***

If the PHA elects to deny or terminate assistance for a portable family, the PHA will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. The PHA will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The receiving PHA will furnish the initial PHA with a copy of the review or hearing decision.

#### ***Absorbing a Portable Family [24 CFR 982.355(d)(1), Notice PIH 2016-09]***

If the PHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the PHA 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 the PHA decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice, but no later than 10 business days following the effective date of the termination of the billing arrangement.



## **CHAPTER 11: REEXAMINATIONS**

### **INTRODUCTION**

In accordance with HUD requirements, the Laurinburg Housing Authority will reexamine the income and household composition of all families at least annually. Families will be provided accurate annual and interim rent adjustments. Re-certifications and interim examinations will be processed in a manner that ensures families are given reasonable notice of rent increases. All annual activities will be coordinated in accordance with HUD regulation. It is a HUD requirement that families report all changes in household composition. It also explains the interim reporting requirements for families, and the standards for timely reporting.

This chapter discusses both annual and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and Housing Authority policies concerning reexaminations are presented in three parts:

Part I: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

### **PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]**

#### **11-I.A. OVERVIEW**

LHA must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. Income consists solely of periodic payments at reasonable predictable levels. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

#### **11-I.B. STREAMLINED ANNUAL REEXAMINATIONS [24 CFR 982.516(b); New HCV GB, Reexaminations]**

HUD permits PHAs to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years the PHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or rate of interest. The PHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the PHA must perform third-party verification of all income sources.

Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

Two streamlining options are available, depending upon the percentage of the family's income that is received from fixed sources. If at least 90 percent of the family's income is from fixed sources, the PHA may streamline the verification of fixed income but is not required to verify non-fixed income amounts. If the family receives less than 90 percent of its income from fixed sources, the PHA may streamline the verification of fixed income and must verify non-fixed income annually.

The LHA will streamline the annual reexamination process by applying the verified COLA or interest rate to fixed-income sources. The PHA will document in the file how the determination that a source of income was fixed was made.

If a family member with a fixed source of income is added, the PHA will use third-party verification of all income amounts for that family member.

If verification of the COLA or rate of interest is not available, the PHA will obtain third-party verification of income amounts.

Third-party verification of fixed sources of income will be obtained during the intake process and at least once every three years thereafter.

Third-party verification of non-fixed income will be obtained annually regardless of the percentage of family income received from fixed sources.

### **11-I.C. SCHEDULING ANNUAL REEXAMINATIONS**

The annual reexamination process will begin 120 days in advance of its scheduled effective date. The Laurinburg Housing Authority will send a notification letter to the family letting them know that it is time for their annual reexamination and will provide the date and time of the initial appointment. The letter includes forms for the family to complete in preparation for the interview. The letter includes instructions permitting the family to reschedule the interview if necessary. The letter tells families who may need to make alternate arrangements due to a disability that they may contact staff to request an accommodation of their needs.

During the interview, the family will provide all information regarding income, assets, expenses, and other information necessary to determine the family's share of rent. The family will sign the HUD consent form and other consent forms that later will be mailed to the sources that will verify the family circumstances. An advocate, interpreter, or other assistant may assist the family in the interview process. The family and LHA must execute a certification attesting to the role and the assistance provided by any such third party. Utilizing the Dru Sjodin National Sex Offender search, LHA will verify that existing tenants are not subject to a lifetime sex offender registration at each annual reexamination.

Upon receipt of verification, the Laurinburg Housing Authority will determine the family's annual income and will calculate their family share.

#### **Notification of and Participation in the Annual Reexamination Process**

If the family fails to attend the initial interview and did not request to reschedule the original appointment, a second notification with a new interview date and appointment time will be mailed. If a family fails to attend two scheduled interviews without PHA approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 12) will be sent to the family's address of record, and to any alternate address provided in the family's file.

#### **11-I.D. 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 982.551(b)].

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include a PHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documents or forms related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time period (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

Additionally, HUD recommends that at annual reexaminations PHAs ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state [Notice PIH 2012-28].

At the annual reexamination, the PHA will ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state. The PHA will use the Dru Sjodin National Sex Offender database to verify the information provided by the tenant.

If the PHA proposes to terminate assistance based on lifetime sex offender registration information, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to termination. [24 CFR 5.903(f) and 5.905(d)]. (See Chapter 12.)

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the PHA has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis.

These include:

- Legal identity

- Age
- Social security numbers
- A person’s disability status
- Citizenship or immigration status

If adding a new family member to the unit causes overcrowding according to the housing quality standards (HQS) (see Chapter 8), the 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 [24 CFR 982.403].

### **11-I.E. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b)(5)]**

During the annual reexamination process, LHA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions 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 their parents or is considered a *vulnerable youth* based on the policies in Sections 3-II.E and 7-II.E, the parents’ income will not be reviewed.

If the student is no longer income eligible based on their own income or the income of their parents, the student’s assistance will be terminated in accordance with the policies in Section 12-I.D. If the student continues to be income eligible based on their own income and the income of their parents (if applicable), a reexamination will be processed in accordance with the policies in this chapter.

### **11-I.F. EFFECTIVE DATES [24 CFR 982.516]**

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 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 Chapter 16.

In general, a *decrease* in the family share of the rent that results from an annual reexamination will take effect on the family’s anniversary date.

- ❖ If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.

- ❖ If the 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 LHA by the date specified, and this delay prevents staff from completing the reexamination as scheduled.

## **PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]**

### **11-II.A. OVERVIEW**

Family circumstances may change throughout the period between annual reexaminations. HUD and LHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances an interim reexamination will be processed. 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.

### **11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

The PHA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

#### **New Family Members Not Requiring PHA Approval**

The family must inform LHA of the birth, adoption, or court-awarded custody of a child within 10 business days.

#### **New Family and Household Members Requiring Approval**

Families must request LHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 14 consecutive days or 30 cumulative days within a 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved prior to the individual moving into the unit.

The Housing Authority will not approve the addition of a new family or household member unless the individual meets the eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part II). LHA will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

If it is determined that an individual meets the eligibility criteria and documentation requirements, a written notice will be provided to the family. If the approval of a new family

member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued a voucher and will be required to move.

If it is determined that an individual does not meet the eligibility criteria or documentation requirements, the family will be notified in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

LHA 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**

If a household member ceases to reside in the unit, the family must inform LHA within 10 business days. This requirement also applies to family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform LHA within 10 business days.

## **11-II.C. CHANGES AFFECTING INCOME OR EXPENSES**

### **PHA-Initiated Interim Reexaminations**

Interim reexaminations can be scheduled either because the PHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, the PHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so

Interim reexaminations will be conducted in each of the following instances:

- ❖ For families receiving the Earned Income Disallowance (EID), an interim reexamination will be conducted at the start and conclusion of the 24-month eligibility period.
- ❖ If the family has reported zero income, an interim examination will be conducted every 3 months as long as the family continues to report that they have no income.
- ❖ If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income); LHA will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.
- ❖ If at the time of the annual reexamination, tenant declarations were used on a provisional basis due to the lack of third-party verification, and third-party verification is now available, LHA will conduct an interim reexamination.

Interim reexamination may be performed at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

### **Family-Initiated Interim Reexaminations**

Families are required to report all increases in income within 10 business days of the change occurring. The PHA will conduct an interim reexamination to recalculate the new family share of rent and new subsidy amount.

## **11-II.D. PROCESSING THE INTERIM REEXAMINATION**

The family must notify LHA of changes in writing. Based on the type of change reported, LHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 business days of receiving a request from LHA. This timeframe may be extended for good cause.

### **Effective Dates**

If the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family. However, if a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*: The decrease will be effective on the first day of the month following the month in which the change was reported and all required documentation was submitted. In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

## **PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT**

### **11-III.A. OVERVIEW**

After gathering and verifying required information for an annual or interim reexamination, the Housing Authority must recalculate the family share of the rent and the subsidy amount, and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

### **11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES**

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the 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]. See Chapter 6 for information on how to select the appropriate payment standard.

When the Housing Authority changes its 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.
- ❖ If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

#### **Subsidy Standards [24 CFR 982.505(c)(4)]**

If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard amount for the family at the family's *first annual* reexamination following the change in family unit size..

#### **Utility Allowances [24 CFR 982.517(d)]**

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in the PHA's utility allowance schedule [HCV GB, p. 12-5].

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination after the allowance is adopted [HCV GB, p. 18-8].

### **11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT**

The Housing Authority 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 rent
- ❖ The amount and effective date of the new tenant rent to owner.

The family must be given an opportunity for an informal hearing regarding the 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)]. The notice also will state the procedures for requesting an informal hearing.

### **11-III.D. DISCREPANCIES**

During an annual or interim reexamination, the Housing Authority may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, LHA may discover errors made by its staff. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 14.



## **CHAPTER 12: TERMINATION OF ASSISTANCE AND TENANCY**

### **INTRODUCTION**

HUD regulations specify the reasons for which a Housing Authority can terminate a family's assistance, and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter presents the policies that govern voluntary and involuntary terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part describes the various circumstances under which assistance under the program can be terminated by the family or by the PHA.

Part II: Approach to Termination of Assistance. This part describes the policies and the process that the PHA will use in evaluating decisions on whether to terminate assistance due to actions or inactions of the family where termination is an option. It specifies the alternatives that the PHA may consider in lieu of termination, the criteria the PHA will use when deciding what action to take and the steps the PHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part describes the HUD policies that govern the owner's right to terminate an assisted tenancy.

### **PART I: GROUNDS FOR TERMINATION OF ASSISTANCE**

#### **12-I.A.OVERVIEW**

HUD requires the Housing Authority to terminate assistance offenses and when the family no longer requires assistance. HUD permits the Housing Authority to terminate 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 LHA.

#### **12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]**

As a family's income increases, the housing assistance payment decreases. If the amount of assistance provided by the Housing Authority is reduced to zero, the family's assistance terminates automatically 180 days after the last HAP payment.

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 Housing Authority of the change and request an interim reexamination before the expiration of the 180-day period.

#### **12-I.C.FAMILY CHOOSES TO TERMINATE ASSISTANCE**

The family may request that LHA terminate housing assistance payments on behalf of the family at any time. The request to terminate assistance must be made in writing and signed by the head

of household, and spouse or co-head if applicable. Before terminating the family's assistance, the Housing Authority will follow the notice requirements in Section 12-II.F.

### **12-I.D. MANDATORY TERMINATION OF ASSISTANCE**

HUD requires the Housing Authority to terminate assistance in the following circumstances:

#### **Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)]**

LHA 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. Incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

A family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. In such cases the Housing Authority will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in section 12-II.C. In making its decision, consideration will be given to the factors described in sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, LHA may, on a case-by-case basis, choose not to terminate assistance.

*Serious and repeated lease violations* will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used will be whether the reason for the eviction was the fault of the tenant or guests.

#### **Failure to Provide Consent [24 CFR 982.552(b)(3)]**

LHA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a regular or interim reexamination.

#### **Failure to Document Citizenship [24 CFR 982.552(b)(4) and 24 CFR 5.514(c)]**

Assistance must be terminated 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. See Chapter 7 for a complete discussion of documentation requirements.

**Failure to Disclose and Document Social Security Numbers [24 CFR 5.218(c), Notice PIH 2012-10]**

Assistance must be terminated if a participating 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 it is determined 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, LHA 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 LHA determined the family to be noncompliant.

**Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]**

Assistance must be terminated 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 the Housing Authority 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, LHA must immediately terminate assistance for the household member.

In this situation, the Housing Authority 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, assistance must be terminated 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 a person with disabilities receiving HCV assistance as of November 30, 2005, and is not residing with their parents in an HCV assisted household, the Housing Authority 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.

**Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-3]**

The Housing Authority must immediately terminate program assistance for deceased single member households.

**12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS**

**Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]**

HUD requires the PHA's administrative plan to establish policies that permit LHA to terminate assistance for certain types of offenses, including:

- 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 threatens the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity

***Use of Illegal Drugs and Alcohol Abuse***

LHA will terminate a family's assistance if any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

LHA will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

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

Consideration will be given to 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.

A record of arrest(s) will not be used as the basis for the termination or proof that the participant engaged in disqualifying criminal activity. In making its decision to terminate assistance, the Housing Authority will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, LHA may, on a case-by-case basis, choose not to terminate assistance.

***Drug-Related and Violent Criminal Activity [24 CFR 5.100]***

LHA will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

Consideration will be given to all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

A record of arrest(s) will not be used as the basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate assistance, the Housing Authority will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, LHA 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)], 24 CFR 984.101(d)***

The Housing Authority may at any time terminate program assistance for a participant, because of any of the actions or inaction by the household.

It is left to the discretion of the PHA whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in section 12-II.E, 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 24 CFR 984.101(d), PHAs are no longer permitted to terminate assistance to a family due to family's failure to meet its obligations under the Family Self-Sufficiency (FSS) contract of participation.

Laurinburg Housing Authority will terminate a family's assistance if:

- If the family violates any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related PHA policies.
- If any member of the family has ever been evicted from public housing.
- If the Housing Authority has ever terminated assistance under the Voucher Program for any member of the family.
- If any member of the family commits drug-related criminal activity, or violent criminal activity.
- If any member of the family commits fraud, bribery or any other corrupt or criminal act in connection with any Federal housing program.
- If the family currently owes rent or other amounts to any PHA in connection with Section 8 or public housing assistance under the 1937 Act.
- If the family has not reimbursed any Housing Authority for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
- If the family has engaged in or threatened abusive or violent behavior toward Housing Authority 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.
- If any household member is subject to a lifetime registration requirement under a State sex offender registration program.
- If a household member's illegal use (or pattern of illegal use) of a controlled substance, or whose abuse (or pattern of abuse) of alcohol, is determined by the Laurinburg Housing Authority to interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.
- If the family has breached the terms of a repayment agreement entered into with the PHA.

In making its decision to terminate assistance, the Housing Authority will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon

consideration of such alternatives and factors, LHA may, on a case-by-case basis, choose not to terminate assistance.

***Family Absence from the Unit [24 CFR 982.312]***

If the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.F.

***Insufficient Funding [24 CFR 982.454]***

LHA may terminate HAP contracts if it is determined, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

The Housing Authority will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If it is determined there is a shortage of funding, prior to terminating any HAP contracts, LHA will determine if any other actions can be taken to reduce program costs. If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the Housing Authority will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, the local HUD field office will be notified. LHA will terminate the minimum number needed in order to reduce HAP costs to a level within its annual budget authority.

If LHA must terminate HAP contracts due to insufficient funding, the PHA will do so in accordance with the following criteria and instructions:

Families who have been assisted in the HCV program the longest will be the first to be terminated, excluding families that include elderly and disabled family members.

Families who at the time of termination, receive \$150.00 or less in housing assistance.

**PART II: APPROACH TO TERMINATION OF ASSISTANCE**

**12-II.A. OVERVIEW**

The Housing Authority 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 Housing Authority the discretion either to terminate the family's assistance or to take another action. This part discusses the various actions LHA may choose to take when it has discretion and outlines the criteria LHA will use to make its decision about whether or not to terminate assistance.

**12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]**

The way in which the Housing Authority 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.

## **12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE**

### **Change in Household Composition**

As a condition of continued assistance, LHA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c)(2)(ii)]. As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon request.

### **Repayment of Family Debts**

If a family owes amounts to LHA, as a condition of continued assistance, the family will be required to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the Housing Authority of the amount owed. See Chapter 16 for policies on repayment agreements.

## **12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE**

### **Evidence**

For criminal activity, HUD permits the PHA to terminate assistance if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

LHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

### **Use of Criminal Conviction Records after Admission [24 CFR 5.903]**

The regulation at 24 CFR 5.903 governs a PHA's access to and use of criminal conviction records obtained from a "law enforcement agency" such as the National Crime Information Center (NCIC), police departments, and other law enforcement agencies that hold criminal conviction records. While the regulatory listing of permitted uses for these records includes PHA screening of applicants for admission to the HCV program, it specifically excludes the use of records for lease enforcement and eviction of HCV participants and excludes by omission a PHA's use of records to terminate assistance for participants. While a PHA has regulatory authority to use criminal conviction records for the purpose of applicant screening for admission, there is no corresponding authority to use these records to check for criminal and illegal drug activity by participants, and therefore, PHAs may not use records for this purpose. The limitations, however, do not apply to criminal conviction information searches from non-federal sources (i.e., sources other than the "law enforcement agencies" defined in 24 CFR 5.902(b)). There is no prohibition that bars a PHA from using non-federal sources to conduct criminal background checks of program participants.

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

The Laurinburg Housing Authority will consider the following facts and circumstances when making its decision to terminate assistance:

- 1) The seriousness of the case, especially with respect to how it would affect other residents' safety or property
- 2) The effects that termination of assistance may have on other members of the family who were not involved in the action or failure to act
- 3) The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E) a victim of domestic violence, dating violence, sexual assault, or stalking
- 4) 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
- 5) 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:
  - a) Any statements made by witnesses or the participant not included in the police report
  - b) Whether criminal charges were filed
  - c) Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal
  - d) Any other evidence relevant to determining whether or not the participant engaged in disqualifying activity
  - e) Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property
  - f) 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. LHA 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.
  - g) 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, LHA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of assistance, LHA will determine whether the behavior is related to the disability. If so, upon the family's request, the LHA will determine whether alternative measures



are appropriate as a reasonable accommodation. Consideration will only be given to accommodations that can reasonably be expected to address the behavior that is the basis of the proposed termination of assistance. See Chapter 2 for a discussion of reasonable accommodation.

## **12-II.E. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

### **VAWA Protections against Termination**

This section describes the special 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.

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 they were imminently threatened by harm from further violence if 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)]**

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 the property where the participant's unit is located, the Housing Authority 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 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]**

When an individual facing termination of assistance for reasons related to domestic violence, dating violence, sexual assault, or stalking claims protection under VAWA, LHA will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-IX.D of this plan. LHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases, LHA will document the waiver in the individual's file.

#### **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. LHA will terminate assistance to a family member if it is determined that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, nonculpable family members.

In making its decision, LHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted by the victim in accordance with this section and section 16-IX.D. LHA will also consider the factors in section 12-II.D. Upon such consideration, LHA may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If the Housing Authority does terminate the assistance of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this plan.

#### **12-II.F. TERMINATION NOTICE**

Whenever a family's assistance will be terminated, the Housing Authority will send a written notice of termination to the family and to the owner. LHA will also send a form HUD-5382 and form HUD-5380 to the family with the termination notice. The notice will state the date on which the termination will become effective. This date generally will be at least 30 calendar days following the date of the termination notice, but exceptions will be made whenever HUD rules, other PHA policies, or the circumstances surrounding the termination require.

When LHA notifies an owner that a family's assistance will be terminated, the Housing Authority will, if appropriate, advise the owner of their right to offer the family a separate, unassisted lease.

Whenever a family's assistance is terminated because of the family's action or failure to act, the Housing Authority will include in its termination notice the VAWA information described in section 16-IX.C of this plan and a form HUD-5382 and form HUD-5380. LHA will request in writing that a family member wishing to claim protection under VAWA notify the Housing Authority within 14 business days.

## **PART III: TERMINATION OF TENANCY BY THE OWNER**

### **12-III.A. OVERVIEW**

Termination of an assisted tenancy is a matter between the owner and the family; the Housing Authority is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy and the reasons for which a tenancy is terminated will determine whether assistance also will be terminated.

### **12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310, 24 CFR 5.2005(c), and Form HUD-52641-A, Tenancy Addendum]**

#### **Serious or Repeated Lease Violations**

The owner is permitted to terminate tenancy for serious or repeated violations of the terms and conditions of the lease. This includes failure to pay rent or other amounts due under the lease, 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).

The Housing Authority'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**

With some limitations imposed by VAWA, 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 (see section 12-II.E).

The owner may terminate tenancy during the term of the lease if any member of the household is:

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

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

### ***Evidence of Criminal Activity***

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction, 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.

If a property is subject to foreclosure, during the term of the lease, the new owner of the property does not have good cause to terminate the tenant’s lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. See Section 13-II.G for a discussion of PHA policies relating to units in foreclosure.

### **12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]**

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action. The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner provide a copy of any eviction notice to LHA at the same time the owner notifies the family. The family is also required to give LHA a copy of any eviction notice (see Chapter 5).

If the eviction action is finalized in court, the owner must provide the Housing Authority with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than five (5) business days following the court-ordered eviction.

### **12-III.D. 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; and
- ❖ The effect of the owner's action on the integrity of the program.

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

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

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

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. (See section 12-II.E.)

#### **12-III.E. 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 (see Chapter 10).

## EXHIBIT 12-1: 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) 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.

### PHA 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.

### PHA 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.

### PHA 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.

#### PHA Policy

The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The PHA will determine eligibility of the new member in accordance with the policies in Chapter 3.

- The family must promptly notify the PHA in writing if any family member no longer lives in the unit.
- 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. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

#### PHA Policy

Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

- The family must supply any information requested by the 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.

#### PHA 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 [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).



- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and PHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and PHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the 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**

### **INTRODUCTION**

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.

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.

The chapter is organized in two parts:

Part I: Owners in the HCV Program. This part discusses the role of an owner in the PHA’s HCV program and highlights key owner rights and responsibilities.

Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between the PHA and the owner as expressed in the HAP contract.

### **PART I: OWNERS IN THE HCV PROGRAM**

#### **13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6] HCV Landlord Strategy Guidebook for PHAs)**

##### **Recruitment**

The Laurinburg Housing Authority has a responsibility to ensure that very low-income families have access to all types and ranges of affordable housing in its jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is to ensure that a sufficient number of owners, representing all types and ranges of affordable housing, are willing to participate in the HCV program.

To accomplish this objective, PHAs must identify and recruit new owners to participate in the program.

If the PHA will be conducting outreach events, the PHA must ensure that notices and communications during outreach events are provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities. PHAs must also take reasonable steps to ensure meaningful access to programs to persons with limited English proficiency.

LHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages and will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

- ❖ Distributing printed material about the program to property owners and managers
- ❖ Contacting property owners and managers by phone or in-person
- ❖ Holding owner recruitment/information meetings at least once a year

- ❖ Participating in community based organizations comprised of private property and apartment owners and managers
- ❖ Developing working relationships with owners and real estate brokers associations
- ❖ To the extent practical, partnering with and attending events hosted by other area agencies to deliver information about the HCV program

Outreach strategies will be monitored for effectiveness and adapted accordingly.

### **Retention**

In addition to recruiting owners 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.

All PHA activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

The PHA will provide owners access to a handbook that explains the program, including HUD and PHA policies and procedures, in easy-to-understand language.

The PHA will give special attention to helping new owners succeed through activities such as:

Providing the owner with a designated PHA contact person.

Coordinating inspection and leasing activities between the PHA, the owner, and the family.

Initiating telephone contact with the owner to explain the inspection process and providing an inspection booklet and other resource materials about HUD housing quality standards.

Providing other written information about how the program operates through a landlord handbook, including answers to frequently asked questions.

Contacting owners via emails or texts to disseminate information.

Additional services may be undertaken on an as-needed basis, and as resources permit.

### **13-I.B. BASIC HCV PROGRAM REQUIREMENTS**

Owners that wish to indicate their willingness to lease a unit to an eligible HCV family or to help the HCV family find a unit must notify Housing Authority. LHA will maintain a listing of such interested 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 unassisted tenant. The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RTA, 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 RTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate requirements for the approval of an assisted tenancy.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The PHA will inspect the owner's dwelling unit at least annually to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards and policies for HQS inspections at initial lease-up and throughout the family's tenancy.

The PHA must determine that the proposed rent for the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, if the gross rent exceeds the applicable payment standard, the PHA must ensure that the family share does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. The HUD Tenancy Addendum includes the HUD requirements governing the tenancy and must be added word-for-word to the owner's lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The PHA and the owner must execute a Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HUD requirements for execution of the HAP contract

### **13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452]**

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- ❖ Performing all of the owner's obligations under the Housing Assistance Payments (HAP) contract;
- ❖ Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit;
- ❖ Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance;
- ❖ Complying with equal opportunity requirements;
- ❖ Preparing and furnishing to the PHA information required under the HAP contract;
- ❖ Collecting from the family any security deposit, the tenant's contribution to rent (that part of rent to owner not covered by the housing assistance payment from the PHA), and any charges for unit damage by the family;
- ❖ Enforcing tenant obligations under the dwelling lease;
- ❖ Paying for utilities and services (unless paid by the family under the lease); and
- ❖ Making 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 (see 24 CFR Part 5, Subpart L; 24 CFR 982.310(h)(4); and 24 CFR 982.452(b)(1))

Owners may only collect that portion of rent that is the tenant's responsibility. Payments received from the tenant in excess of the tenant's portion of rent is a violation of the terms of the HAP contract and will result in the termination of the HAP contract and possible debarment from future participation in the Section 8 HCV program.

### **13-I.D. OWNER QUALIFICATIONS**

LHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the Housing Authority may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues.

#### **Owners Barred from Participation [24 CFR 982.306(a) and (b)]**

LHA must not approve the assisted tenancy if the owner has been debarred, suspended, or subject to a limited denial of participation. HUD may also direct the Housing Authority to disapprove 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 Laurinburg Housing Authority must not approve a tenancy if the owner is the parent, child,

grandparent, grandchild, sister, or brother of any member of the family. An exception to this prohibition will be considered as a reasonable accommodation for a family member with a disability.

**Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19; Form HUD-52641, section 13]**

The Laurinburg Housing Authority must not approve a tenancy in which certain classes of persons have any interest, direct or indirect, during tenure or for one year thereafter:

- ❖ Any present or former member or officer of the Housing Authority (except a participant commissioner);
- ❖ Any employee of the Housing Authority, or any contractor, subcontractor, or agency of LHA, 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; and
- ❖ Any member of the Congress of the United States.

Such “covered individual” may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or for one year thereafter.

*Immediate family member* means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister, or brother (including a stepsister or stepbrother) of any covered individual.

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.

In considering whether to request a conflict of interest waiver from HUD, the PHA will consider certain factors such as consistency of the waiver with state and local laws, the existence of alternative housing available to families, the individual circumstances of a particular family, the specific duties of individuals whose positions present a possible conflict of interest, the nature of any financial investment in the property and plans for disclosure/divestiture, and the possible appearance of impropriety

**Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]**

The regulations permit LHA to disapprove a request for tenancy for various actions and inactions of the owner. LHA will refuse to approve a request for tenancy if the PHA becomes aware that any of the following are true:

- ❖ The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);
- ❖ The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- ❖ The owner has engaged in any drug-related criminal activity or any violent criminal activity;

- ❖ The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;
- ❖ The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:
  - (i) Threatens the right to peaceful enjoyment of the premises by other residents;
  - (ii) Threatens the health or safety of other residents, of employees of the 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, consideration will be given to 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, LHA may, on a case-by-case basis, choose to approve an owner.

### **Legal Ownership of Unit**

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 (e.g., deed of trust, proof of taxes for most recent year).

Local tax records will be reviewed to verify that the owner is the owner of the property.

### **13-I.E. 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. 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.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

## **PART II: HAP CONTRACTS**

### **13-II.A. OVERVIEW**

The HAP contract represents a written agreement between the PHA and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the 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 tenant-based program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and use their assistance to lease the space for the manufactured home. See chapter 15 for a discussion of any special housing types included in the PHA's HCV program.

If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract. This section is a brief overview and summary of the HAP contract, discussed in part II.

### **13-II.B. HAP CONTRACT CONTENTS**

HUD, specifically Housing Assistance Payment (HAP) Contract, requires the HAP contract format.

The HAP contract contains three parts:

Part A of the contract includes basic **contract information** about the name of the tenant family, address of the contract unit, names of all household members, first and last dates of initial lease term, amount of initial monthly rent to owner, amount of initial housing assistance payment, utilities and appliances to be supplied by owner and tenant, signatures of PHA and owner [HCV Guidebook, pp 11-10 and 11-11].

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan.

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.

The PHA 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

### **13-II.C. HAP CONTRACT PAYMENTS**

#### **General**

During the term of the HAP contract, and subject to the provisions of the HAP contract, the



Housing Authority 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 the policies described in Chapter 6 and is subject to change during the term of the HAP contract. The PHA must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by the PHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant and the HAP payment is equal to the rent to owner as specified in the lease.

The family is not responsible for payment of the HAP payment, and the PHA is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the rent to owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from the PHA, the excess amount must be returned immediately. If the PHA determines that 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 amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

### **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 accepting the monthly HAP payment, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

### **Late HAP Payments [24 CFR 982.451(a)(5)]**

LHA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. Penalties for late HAP payments can only be imposed if 1)

the penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants; 2) it is the owner's normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the owner charges the assisted family for late payment of the family's share of the rent.

The PHA is not required to pay a late payment penalty if HUD determines that 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 [HCV Guidebook p. 11-7].

### **Termination of HAP Payments [24 CFR 982.311(b)]**

The Housing Authority must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated. HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the Housing Authority will 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.

The owner must inform LHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide 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, LHA 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 LHA of the date when the family actually moves from the unit or the family is physically evicted from the unit.

### **13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453]**

There are a number of circumstances under which an owner might breach the HAP contract. Before LHA invokes a remedy against an owner, all information and documents available to determine if the contract has been breached will be evaluated. If relevant, an audit of the owner's records pertaining to the tenancy or unit will be performed.

If it is determined that the owner has breached the contract, LHA will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

### **13-II.E. HAP CONTRACT TERM AND TERMINATIONS**

The term of the HAP contract runs concurrently with the term of the dwelling lease, beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extension. The HAP contract and the housing assistance payments made under the HAP contract terminate if:

- ❖ The owner of the family terminates the lease;
- ❖ The lease expires;
- ❖ LHA terminates the HAP contract;

- ❖ LHA terminates assistance to the family;
- ❖ The family moves from the assisted unit. In this situation, the owner is entitled to keep the housing assistance payments for the month when the family moves out of the unit;
- ❖ 180 calendar days have elapsed since LHA made the last HAP to the owner;
- ❖ The family is absent from the unit for longer than the maximum period allowed by LHA policy;
- ❖ The Annual Contributions Contract between LHA and HUD expires; and
- ❖ LHA elects to terminate the contact.

LHA may elect to terminate the HAP contract in each of the following situations:

- ❖ Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];
- ❖ The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see Chapter 8;
- ❖ The unit does not meet HQS [24 CFR 982.404] – see Chapter 8;
- ❖ The family breaks up [HUD Form 52641] – see Chapter 3;
- ❖ The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

When the HAP contract is terminated by LHA, a written notice must be given to owner and the family. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract.

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which LHA gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return any housing assistance payment received after this period.

### **13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]**

When a dwelling unit with an assisted family changes ownership, the HAP contract cannot be assigned to the new owner without the prior written consent of the Housing Authority. An owner under a HAP contract must notify LHA in writing prior to a change in the legal ownership of the unit and must supply all information as requested.

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

LHA must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

Within 10 business days of receiving the owner's request, LHA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to LHA that includes:

- ❖ A copy of the escrow statement or other document showing the transfer of title and recorded deed;

- ❖ A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;
- ❖ The effective date of the HAP contract assignment;
- ❖ A written agreement to comply with the terms of the HAP contract;
- ❖ A certification that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, HAP contract with the old owner will be terminated. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, the Housing Authority will process the leasing in accordance with the policies in Chapter 9.

### **13-II.G. FORECLOSURE [Notice PIH 2010-49]**

Families receiving HCV assistance are entitled to certain protections set forth under the Protecting Tenants at Foreclosure Act (PTFA). During the term of the lease, the new owner of the property does not have good cause to terminate the tenant's lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. Further, the new owner assumes interest in the lease between the prior owner and the tenant and to the HAP contract.

Any state or local law that provides longer periods or other additional protections for tenants also applies.

If a property is in foreclosure, the PHA will make all reasonable efforts to determine the status of the foreclosure and ownership of the property and will continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract.

The PHA will attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. This will include a request for owner information, including a tax identification number and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is still effective by operation of law.

The PHA will inform the tenant that they must continue to pay rent in accordance with the lease, and if the new owner refuses to accept payment or cannot be identified, the tenant should pay rent into escrow. Failure to pay rent may constitute an independent ground for eviction.

In the event that the PHA is unable to make HAP payments to the new owner due to an action or inaction by the new owner that prevents such payments (e.g., rejection of payments or failure to maintain the property according to HQS), or due to an inability to identify the new owner, the PHA will either use the funds to pay:

The utilities that are the owner's responsibility after taking reasonable steps to notify the owner; except that if the unit has been or will be rendered uninhabitable due to termination or threat of termination of service, prior notice is not required. In the latter case, the PHA shall notify the owner within a reasonable time after making the utility payment; or

For the family's reasonable moving costs, including security deposit costs.

The PHA will also refer the tenant, as needed, to the local legal aid office in order to ensure adequate protection of the tenant's rights and enforcement of the successor in interest's performance under the HAP contract.

See Section 12-III.B for a discussion of foreclosure as it pertains to owner termination of tenancy.

## CHAPTER 14: PROGRAM INTEGRITY

### INTRODUCTION

The Laurinburg Housing Authority is committed to ensuring that subsidy funds made available are spent in accordance with HUD requirements. This chapter covers HUD and LHA policies designed to prevent, detect, investigate, and resolve instances of unintentional errors and intentional program abuse.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents PHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the PHA must and may take when errors or program abuses are found.

### PART I. PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

#### 14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

To ensure that the Laurinburg Housing Authority's HCV program is administered according to the highest ethical and legal standards a variety of techniques will be used to ensure that both errors and intentional program abuse are rare. These include, but are not limited to:

- ❖ Discussing program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.
- ❖ Providing each applicant and participant with a copy of "Is Fraud Worth It?" (Form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.
- ❖ Providing 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 2017-12. 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.
- ❖ Placing a warning statement about the penalties for fraud (as described in the 18 U.S.C. 1001 and 1010) on key LHA forms and form letters that request information from a family or owner.
- ❖ Reviewing and explaining the contents of all HUD- and LHA-required forms prior to requesting family member signatures.
- ❖ At every regular reexamination, explaining any changes in HUD regulations or LHA policy that affect program participants.
- ❖ Providing owners with ongoing information about the program, with an emphasis on actions and situations to avoid.
- ❖ Providing staff the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter, the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

## **14-I.B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, LHA will use a variety of activities to detect errors and program abuse.

### **Quality Control and Analysis of Data**

Under the Section 8 Management Assessment Program (SEMAP), HUD requires the 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 of a sample of units to ensure HQS compliance [24CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

In addition to the SEMAP quality control requirements, LHA will employ a variety of methods to detect errors and program abuse including:

- ❖ Routinely using HUD and other non-HUD sources of up-front income verification. This includes SWICA and any other private or public databases available to the Housing Authority.
- ❖ At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.
- ❖ Comparing family-reported income and expenditures to detect possible unreported income.

### **Independent Audits and HUD Monitoring**

OMB Circular A-133 requires all Housing Authority's that expend \$750,000 or more in federal awards annually to have an independent audit. In addition, HUD conducts periodic on-site and automated monitoring of LHA activities and notifies LHA of errors and potential cases of program abuse. LHA will use the results of these reports to identify potential program abuses as well as to assess the effectiveness of the Authority's error detection and abuse prevention efforts. Staff, program participants, and the public are encouraged to report possible program abuse.

## **14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE**

### **When the PHA Will Investigate**

The Laurinburg Housing Authority 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 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. When inconsistent or contradictory information is detected through file reviews and the verification process, LHA will investigate the matter.

### **Consent to Release of Information**

LHA may investigate possible instances of error or abuse using all available LHA and public records. If necessary, families will be required to sign consent forms for the release of additional information.

### **Analysis and Findings**

The Laurinburg Housing Authority will base its evaluation on a preponderance of the evidence collected during its investigation. *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 that as a whole shows that the fact 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, LHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed back to LHA, and (3) what corrective measures or penalties will be assessed.

### **Consideration of Remedies**

In the case of family-caused errors or program abuse, LHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, LHA will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation has occurred, and (3) the effects of a particular remedy on family members who were not involved in the offense.

### **Notice and Appeals**

LHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the error or program abuses was determined, (3) the remedies to be employed, and (4) the family's right to appeal the results through the informal review or hearing process, if applicable (see Chapter 16).

## **PART II. CORRECTIVE MEASURES AND PENALTIES**

### **14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS**

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

#### **Corrections**

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the Laurinburg Housing Authority must promptly implement the correct HAP, family share, and any utility reimbursement.

*Increases* in the family share will be implemented on the first of the month following a written 30-day notice. Any *decreases* in family share will become effective the first of the month following the discovery of the error.

#### **Reimbursement**

Whether the family or owner is required to reimburse the Housing Authority or the Housing Authority is required to make retroactive subsidy payments to the owner or family, it depends



upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or intentional program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

#### **14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE**

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members. An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows LHA to use incorrect information provided by a third party.

##### **Family Reimbursement to PHA [HCV GB pp. 22-12 to 22-13]**

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The family will be required to pay 20% of the money owed and will be allowed to enter into a repayment agreement to pay the balance. If the tenant has a reoccurrence of money owed due to not reporting a change, the family will be required to pay the amount owed in full in order for their assistance through the HCV program to continue. A third offense will result in termination of assistance. If the family defaults on the repayment agreement or fails to repay the excess subsidy, LHA will terminate the family's assistance in accordance with the policies in Chapter 12.

##### **PHA Reimbursement to Family**

LHA will not reimburse the family for any underpayment of assistance when the family clearly causes the underpayment.

##### **Prohibited Actions**

An applicant or participant in the HCV program must not knowingly:

- ❖ Make a false statement to LHA [Title 18 U.S.C. Section 1001].
- ❖ Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

Any of the following will be considered evidence of family program abuse:

- ❖ Payment to the owner in excess of amounts authorized by LHA for rent, security deposit, and additional services
- ❖ Offering bribes or illegal gratuities to the LHA Board of Commissioners, employees, contractors, or other LHA representatives
- ❖ Offering payments or other incentives to the owner or a third party as an inducement for the third party to make false or misleading statements to LHA on the family's behalf
- ❖ Use of a false name or the use of falsified, forged, or altered documents
- ❖ Intentional misreporting of family information or circumstances (e.g. income, family composition)
- ❖ Omitted facts that were obviously known by a family member (e.g., not reporting employment income)
- ❖ Admission of program abuse by an adult family member

The PHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

### **Penalties for Program Abuse**

In the case of program abuse caused by a family LHA may, at its discretion, impose any of the following remedies.

- ❖ Require the family to repay excess subsidy amounts paid by LHA, as described earlier in this section
- ❖ Require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. (See policies in Chapter 3 for applicants and Chapter 12 for participants.)
- ❖ Deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- ❖ Refer the family for state or federal criminal prosecution as described in section 14-II.E.

### **14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE**

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g. HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month or after a family no longer resides in the unit.

#### **Owner Reimbursement to the PHA**

In all cases of overpayment of subsidy caused by the owner, the owner must repay to LHA any excess subsidy received. LHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months. In cases where the owner has received excess subsidy, LHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

#### **Prohibited Owner Actions**

An owner participating in the HCV program must not:

- ❖ Make any false statement to LHA [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)]
- ❖ Charge the family rent above or below the amount specified by LHA
- ❖ Charge a security deposit other than that specified in the family's lease
- ❖ Charge the family for services that are provided to unassisted tenants at no extra charge
- ❖ Knowingly accept housing assistance payments for any month(s) after the family has vacated the unit
- ❖ Knowingly accept incorrect or excess housing assistance payments
- ❖ Offer bribes or illegal gratuities to LHA Board of Commissioners, employees, contractors, or other LHA representatives

- ❖ Offer payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to LHA
- ❖ Reside in the unit with an assisted family

### **Remedies and Penalties**

When LHA determines that the owner has committed program abuse, LHA may take any of the following actions:

- ❖ Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in Chapter 16
- ❖ Terminate the HAP contract (See Chapter 13)
- ❖ Bar the owner from future participation in any LHA programs
- ❖ Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

### **14-II.D. PHA-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of LHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of LHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct are addressed in the Employee Personnel Manual.

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 an overpayment of subsidy PHA staff cause the error or program abuse.

#### **PHA Reimbursement to Family or Owner**

LHA must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from LHA's administrative fee reserves [HCV GB p. 22-12].

#### **Prohibited Activities**

Any of the following will be considered evidence of program abuse by LHA 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 materials to LHA
- ❖ Disclosing confidential or proprietary information to outside parties
- ❖ Gaining profit as a result of insider knowledge LHA activities, policies, or practices
- ❖ Misappropriating or misusing HCV funds
- ❖ Destroying, concealing, removing, or inappropriately using any records related to the HCV program

- ❖ Committing any other corrupt or criminal act in connection with any federal housing program

#### **14-II.E. CRIMINAL PROSECUTION**

When LHA determines that program abuse by an owner, family, or LHA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, LHA will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG). Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

#### **14-II.F. FRAUD AND PROGRAM ABUSE RECOVERIES**

LHA may retain a portion of program fraud losses that are recovered from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

## **CHAPTER 15: SPECIAL HOUSING TYPES [24 CFR 982 Subpart M; New HCV GB, Special Housing Types]**

### **INTRODUCTION**

The PHA is permitted but not required to allow a family to use certain special housing types. However, a PHA must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. The PHA may also limit the number of families who receive HCV assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types.

***Special housing types include:*** single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601]. A single unit cannot be designated as more than one type of special housing. The PHA cannot give preference to households that wish to live in any of these types of housing and cannot require households to select any of these types of housing [New HCV GB, *Special Housing Types*, p. 3].

The Laurinburg Housing Authority will approve a lease for any of the following special housing type:

- ❖ Single Room Occupancy
- ❖ Congregate Housing
- ❖ Group homes
- ❖ Shared housing

**PART I: SINGLE ROOM OCCUPANCY** [24 CFR 982.602 through 982.605; Form HUD-52641; New HCV GB, *Special Housing Types*, p. 4]

#### **15-I.A. OVERVIEW**

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Single room occupancy (SRO) housing.”

#### **15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for SRO housing is 75 percent of the zero-bedroom payment standard amount on the PHA’s payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero-bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

### **15-I.C. HOUSING QUALITY STANDARDS (HQS)**

HQS requirements described in Chapter 8 apply to SRO housing except that sanitary facilities, and space and security characteristics must meet local code standards for SRO housing. In the absence of applicable local code standards for SRO housing, the following standards apply:

- *Access:* Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety:* All SRO facilities must have a sprinkler system that protects major spaces. “Major spaces” are defined as hallways, large common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards, the requirements discussed below apply [24 CFR 982.605].

- *Sanitary Facilities:* At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to males, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway to all persons sharing them and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- *Space and Security:* An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

## **PART II: CONGREGATE HOUSING**

[24 CFR 982.606 through 982.609; Form HUD-52641; New HCV GB,  
*Special Housing Types*, p. 6]

### **15-II.A. OVERVIEW**

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by the PHA, a family member or live-in aide may reside with the elderly person or person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: "This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Congregate housing."

### **15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area for the assisted family. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), the PHA must use the payment standard for a zero-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), the PHA must use the one-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

### **15-II.C. HOUSING QUALITY STANDARDS**

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below. Congregate housing must have a refrigerator of appropriate size in the private living area of each resident, a central kitchen and dining facilities located within the premises and accessible to the residents, and food service for the residents, that is not provided by the residents themselves.

The congregate housing must contain adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary.

The housing quality standards applicable to lead-based paint do not apply unless a child under the age of six is expected to reside in the unit.

**PART III: GROUP HOME** [24 CFR 982.610 through 982.614; Form HUD-52641; New HCV GB, *Special Housing Types*, p. 8]

### **15-III.A. OVERVIEW**

A group home is a state-approved (licensed, certified, or otherwise approved in writing by the state) facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents. No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by the PHA, a live-in aide may live in the group home with a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Group home.”

### **15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

Unless there is a live-in aide, the family unit size (voucher size) for an assisted occupant of a group home must be zero- or one-bedroom. If there is a live-in aide, the aide must be counted in determining the household’s unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the group home size. The prorata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home. The number of persons in the assisted household equals one assisted person plus any PHA-approved live-in aide.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the prorata share of the family unit size to the utility allowance for the group home.



The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorata portion of the reasonable rent for the group home. In determining reasonable rent, the PHA must consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

### **15-III.C. HOUSING QUALITY STANDARDS**

The entire unit must comply with HQS requirements described in Chapter 8, except for the requirements stated below.

- *Sanitary Facilities:* A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service:* Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- *Space and Security:* Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents. Doors and windows accessible from outside the unit must be lockable.
- *Structure and Material:* To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- *Site and Neighborhood:* Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from disturbing noises and reverberations, and other hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
  - Dangerous walks or steps
  - Instability
  - Flooding, poor drainage
  - Septic tank back-ups
  - Sewage hazards
  - Mud slides
  - Abnormal air pollution
  - Smoke or dust
  - Excessive noise

- Vibrations or vehicular traffic
- Excessive accumulations of trash
- Vermin or rodent infestation, and
- Fire hazards.

The housing quality standards applicable to lead-based paint do not apply unless a child under the age of six is expected to reside in the unit.

**PART IV: SHARED HOUSING**[24 CFR 982.615 through 982.618; Form HUD-52641; Notice PIH 2021-05; New HCV GB, *Special Housing Types*, p. 11]

#### **15-IV.A. OVERVIEW**

Families in markets with tight rental conditions or with a prevalence of single-family housing may determine a shared housing living arrangement to be a useful way to secure affordable housing. PHAs offering shared housing as a housing solution may also experienced some reduction in the average per-unit-cost (PUC) paid on behalf of assisted families.

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The unit may be a house or an apartment. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons.

Shared housing may be offered in a number of ways, including for-profit co-living (such as a boarding house, single bedroom with common living room/kitchen/dining room) run by a private company [Notice PIH 2021-05].

The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by the PHA, a live-in aide may reside with the family to care for a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When shared housing is offered as a housing option, HUD encourages PHAs to consider ways in which the families may be assisted in finding shared housing, including for-profit shared housing matching (such as roommates or single-family homes) and online sites that charge a fee for their matching services, or nonprofit shared housing matching services. HUD further encourages PHAs to include information about this housing possibility in the family’s voucher briefing.

PHAs should be aware of potential local legal barriers to HCV participants using shared housing, which can create additional obstacles for shared housing:

- Municipalities may have occupancy limits for the number of unrelated persons who may share a housing unit.
- Local zoning codes for single-family housing may restrict occupancy in certain areas to households whose family members are related by blood.

PHAs should work with local jurisdictions to find solutions that encourage affordable housing and are consistent with the Fair Housing Act, Title VI, and other federal, state, and local fair housing laws. PHAs should inform HUD if they encounter barriers to shared housing that may conflict with fair housing laws.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Shared housing.”

#### **15-IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size (voucher size) or the prorata share of the payment standard for the shared housing unit size.

The prorata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private, non-shared space by the total number of bedrooms in the unit.

**Example:** Family holds a two-bedroom voucher.  
Shared housing unit size: bedrooms available to assisted family = 2  
Total bedrooms in the unit: 3  
2 Bedrooms for assisted family  
÷ 3 Bedrooms in the unit  
.667 pro-rata share  
2 BR payment standard: \$1200  
3 BR payment standard: \$1695  
 $\$1695 \times .667$  (pro-rata share) = \$1131  
\$1131 is lower than the \$1200 payment standard for the 2 BR family unit size  
\$1131 is the payment standard used to calculate the HAP

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted family living in shared housing is the prorata share of the utility allowance for the shared housing unit.

**Example:** A family holds a 2-bedroom voucher. The family decides to occupy 3 out of 4 bedrooms available in the unit.

The utility allowance for a 4-bedroom unit equals \$200  
The utility allowance for a 2-bedroom unit equals \$100  
The prorata share of the utility allowance is \$150 (3/4 of \$200)  
The PHA will use the 2-bedroom utility allowance of \$100.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the

pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, the PHA may consider whether sanitary and food preparation areas are private or shared.

#### **15-IV.C. HOUSING QUALITY STANDARDS**

The PHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family*: Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security*: The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size (voucher size). A zero-bedroom or one-bedroom unit may not be used for shared housing.

## CHAPTER 16: PROGRAM ADMINISTRATION

### INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes 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.

## **PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]**

Occasionally, it is necessary for the Laurinburg Housing Authority to spend money from its Section 8 Administrative Fee Reserve to meet unseen or extraordinary expenditures or for its other housing related purposes consistent with State law. To encourage an increase in leasing success rate during times when the LHA success rate is below 50%, LHA Board approved payment of security deposits and/or utility deposits on behalf of new tenants entering the program. The amount paid by LHA on behalf of the tenant will be determined based on market conditions at the time the tenant moves into the unit.

The Laurinburg Housing Authority Board of Commissioners authorizes the Executive Director to expend without prior Board approval up to **\$25,000** for authorized expenditures. Any item(s) exceeding **\$25,000** will require prior Board of Commissioner approval before any charge is made against the Section 8 Administrative Fee Reserve.

## **PART II: SETTING PROGRAM STANDARDS AND SCHEDULES**

### **16-II.A. OVERVIEW**

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow 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*, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and
- ❖ *Utility Allowances*, which specify how a family's payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

Copies of the payment standard and utility allowance schedules are available for review in the PHA's offices 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.

The PHA 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.

Establishing and updating the PHA passbook rate, which is used to calculate imputed income from assets, is covered in Chapter 6 (see Section 6-I.G.).

### **16-II.B. 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.

### **Updating Payment Standards**

The Laurinburg Housing Authority will review its determination of the payment standard annually after publication of the FMRs.

The PHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published, and at other times as determined necessary. In addition to ensuring the payment standards are always within the "basic range" the PHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability:** The PHA 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. The PHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

**Rent Burden of Participating Families:** Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, the PHA will consider increasing the payment standard. In evaluating rent burdens, the PHA will not include families renting a larger unit than their family unit size.

**Quality of Units Selected:** The PHA may 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:** The PHA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.

**Unit Availability:** The PHA may 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:** The PHA may 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.

Effective dates of changes to payment standard amounts will be determined at time of update. The PHA will always ensure the payment standards will be within the basic range.

Payment standards will not be raised solely to allow the renting of luxury quality units.

**Exception Payment Standards [982.503(c) (5), Notice PIH 2018-01, FR Notice 9/27/2021]**

In order to help families find housing outside areas of high poverty or when voucher holders are having trouble finding housing for lease under the program, the Housing Authority may request that HUD approve an exception payment standard rent for certain areas within its jurisdiction. The areas may be of any size, though generally not smaller than a census tract. The Housing Authority may request one such exception payment standard area or many. Exception payment standard rent authority may be requested for all or some unit sizes, or for all or some unit types.

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

**Voluntary Use of Small Area FMRs [24 CFR 982.503, Notice PIH 2018-01]**

The PHA will not voluntarily adopt the use of SAFMRs except to establish exception payment standards in certain zip code areas.

**Unit-by-Unit Exceptions [24 CFR 982.503(b), 24 CFR 982.505(d), Notice PIH 2010-26]**

When needed as a reasonable accommodation, LHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [24 CFR 982.503(b)]. LHA 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.

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 Housing Authority 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, LHA may request a “success rate payment standard” that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the Housing Authority to set its payment standards at 90-110 percent of a higher FMR (the 50th, rather than the 40th percentile FMR). To support the request, LHA 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;
- ❖ LHA 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, LHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of its jurisdiction within the FMR area.

To encourage an increase in the leasing success rate during times when LHA’s success rate is below 50%, LHA Board approved payment of security deposits and/or utility deposits on behalf of new tenants entering the program using on-going administrative fee or administrative fee reserves. The amount paid by LHA on behalf of the tenant will be determined based on current market conditions

#### **Decreases in the Payment Standard below the Basic Range [24 CFR 982.503(d)]**

LHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD’s sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

#### **16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]**

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

The utility allowance schedule is 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 Housing Authority uses normal patterns of consumption for the entire community and current utility rates.

The Housing Authority reviews the utility allowance schedule annually and revises any allowance for a utility category if there has been a change of 10% or more in the utility rate since the last time the utility allowance schedule was revised. The Housing Authority maintains information supporting the annual review of utility allowances and any revisions made in its utility allowance schedule. Participants may review this information at any time by making an appointment with the Section 8 Department.

The Housing Authority uses the appropriate utility allowance for the size of dwelling unit actually leased by the family (rather than the family unit size as determined under the Housing Authority subsidy standards).

At each reexamination, the Housing Authority applies the utility allowance from the most current utility allowance schedule.

The Housing Authority will approve a request for a utility allowance that is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family member with a disability.

The utility allowance will be subtracted from the family's share to determine the amount of the Tenant Rent. The Tenant Rent is the amount the family owes each month to the owner. The amount of the utility allowance is then still available to the family to pay the cost of their utilities. Any utility cost above the allowance is the responsibility of the tenant. Any savings resulting from utility costs below the amount of the allowance belong to the tenant.

### **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. The PHA 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 the PHA 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 (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

### **Utility Allowance Revisions**

The PHA must review its schedule of utility allowances at least annually, 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.

## **PART III: INFORMAL REVIEWS AND HEARINGS**

### **16-III.A. OVERVIEW**

When the Laurinburg Housing Authority 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.

### **16-III.B. INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

#### **Decisions Subject to Informal Review [24 CFR 982.554(a) and (c)]**

The Laurinburg Housing Authority will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes denying listing on the 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 discretionary administrative determinations by LHA, general policy issues or class grievances, determination of the family unit size under LHA’s subsidy standards, LHA’s determination not to grant approval of tenancy, LHA’s determination that the unit is not in compliance with HQS, and LHA’s determination that the unit is not in accordance with HQS due to family size or composition.

#### **Notice to the Applicant [24 CFR 982.554(a)]**

The Laurinburg Housing Authority will give an applicant prompt notice of a decision to deny assistance. The notice will contain a brief statement of the reasons for the decision and will inform the applicant of their right to request an informal review of the decision. The notice will describe how to obtain the informal review.

#### **Scheduling an Informal Review**

A request for an informal review must be made in writing and delivered to the Laurinburg Housing Authority 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 Housing Authority’s denial of assistance. The Housing Authority must schedule and send written notice of the informal review within 10 business days of the family’s request.

If the informal review will be conducted remotely, at the time the PHA notifies the family of the informal review, the family will be informed:

Regarding the processes to conduct a remote informal review;

That, if needed, the PHA will provide technical assistance prior to and during the informal review; and

That if the family or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote informal review, the family may inform the PHA and the PHA will assist the family in either resolving the issues or allow the family to participate in an in-person informal review, as appropriate.

### **Informal Review Procedures [24 CFR 982.554(b)]**

A person other than the one who made or approved the decision under review, or a subordinate of this person must conduct the informal review. The applicant must be provided an opportunity to present written or oral objections to the decision of the Housing Authority. The person conducting the review will make a recommendation to the Housing Authority, and the Housing Authority is responsible for making the final decision as to whether assistance should be granted or denied.

### **Remote Informal Reviews [Notice PIH 2020-32]**

All PHA policies and processes for remote informal reviews must be conducted in accordance with due process requirements and be in compliance with HUD regulations. There is no requirement that informal reviews be conducted in-person and, as such, HUD allows PHAs to conduct all or a portion of their informal review remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote informal reviews, applicants may still request an in-person informal review, as applicable.

The PHA has the sole discretion to require that informal reviews be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, the PHA will conduct an informal review remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have child care or transportation that would enable them to attend the informal review, or if the applicant believes an in-person informal review would create an undue health risk. The PHA will consider other reasonable requests for a remote informal review on a case-by-case basis.

### **Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

As with in-person informal reviews, the platform for conducting remote informal reviews must be accessible to persons with disabilities and the informal review must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit

from all aspects of the informal review process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal review is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual his or her inability to participate in the remote informal review, and the PHA should consider whether postponing the remote informal review to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal reviews, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal reviews.

### **Conducting Remote Informal Reviews**

The PHA must ensure that the lack of technology or inability to use technology for remote informal reviews does not pose a disadvantage to families that may not be apparent to the PHA. The PHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal review and, if the family does not have the proper technology to fully participate, either postpone the informal review or provide an alternative means of access.

As with in-person informal reviews, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal review. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA must ensure that the applicant has the right to hear and be heard. All PHA policies and processes for remote informal reviews must be conducted in accordance with due process requirements and be in compliance with HUD regulations at 24 CFR 982.554 and guidance specified in Notice PIH 2020-32.

The PHA will conduct remote informal reviews via a video conferencing platform, when available. If, after attempting to resolve any barriers, applicants are unable to adequately access the video conferencing platform at any point, or upon applicant request, the informal review will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal review will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to scheduling the remote review, the PHA will provide the family with login information and/or conferencing call-in information and an electronic and/or physical copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify the PHA of any known barriers. The PHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

If the informal review is to be conducted remotely, the PHA will require the family to provide any documents directly relevant to the informal review at least 24 hours before the scheduled

review through the mail, via email, or text. The PHA will scan and email copies of these documents to the PHA representative the same day.

Documents will be shared electronically whenever possible.

The PHA will follow up the email with a phone call and/or email to the applicant at least one business day prior to the remote informal review to ensure that the applicant received all information and is comfortable accessing the video conferencing or call-in platform.

The PHA will ensure that all electronic information stored or transmitted with respect to the informal review is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

### **Informal Review Decision [24 CFR 982.554(b)]**

LHA must notify the applicant of the final decision, including a brief statement of the reasons for the final decision. In rendering a decision, the following matters will be evaluated:

- ❖ 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. LHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and HUD requires the denial, the decision to deny assistance will be upheld.
- ❖ If the facts prove the grounds for denial, and the denial is discretionary, LHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

LHA 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* because of the informal review, processing for admission will resume. If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

### **16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]**

LHA must offer an informal hearing for certain determinations relating to the individual circumstances of a participant family. A *participant* is defined as a family that has been admitted to the HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether LHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and Authority policies.

#### **Retention and Confidentiality of Criminal Records [24 CFR 5.905(c)(1) (iii); 5.903(g)(3)]**

Criminal records will be maintained confidentially and may only be disclosed to persons with a job-related need to know the contents. In accordance with 24 CFR 5.905(b)(4), criminal background results, including sex offender results **must** be destroyed promptly once their purpose has been served. For example, if the PHA decides to deny admission based on the criminal conviction record, the record may be retained during the period allowed for requesting an informal review, and until the review, if requested has been completed. The record must then be destroyed promptly. The PHA must not retain criminal

conviction records for longer periods, even if the records are stored separately from the family's file. Criminal background records of sex offenders are subject to the rules governing other criminal conviction records. However, the PHA must retain (24 CFR 982.158(f)) a record of the type of screening and the date screening was performed.

### **Decisions Subject to Informal Hearing**

Circumstances for which LHA 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 LHA utility allowance schedule;
- ❖ A determination of the family unit size under LHA's subsidy standards;
- ❖ A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the PHA's subsidy standards, or the LHA determination to deny the family's request for exception from the standards;
- ❖ A determination to terminate assistance for a participant family because of the family's actions or failure to act;
- ❖ A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under LHA policy and HUD rules; and
- ❖ 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 Housing Authority;
- ❖ General policy issues or class grievances;
- ❖ Establishment of the schedule of utility allowances for families in the program;
- ❖ A determination not to approve an extension or suspension of a voucher term;
- ❖ A determination not to approve a unit or tenancy;
- ❖ A PHA determination that a unit selected by the applicant is not in compliance with HQS;
- ❖ A determination that the unit does not comply with HQS based on family size;
- ❖ For money owed to the PHA;
- ❖ For termination due to being placed on the sex offender registry; and
- ❖ A determination by the Housing Authority to exercise or not to exercise any right or remedy against an owner under a HAP contract.

### **Remote Informal Hearings [Notice PIH 2020-32]**

There is no requirement that informal hearings be conducted in-person, and as such, HUD allows PHAs to conduct all or a portion of their informal hearings remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote informal hearings, applicants may still request an in-person informal hearing, as applicable.

The PHA's essential responsibility is to ensure informal hearings meet the requirements of due process and comply with HUD regulations. Therefore, all PHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements and will be in compliance with HUD regulations

The PHA has the sole discretion to require that informal hearings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, the PHA will conduct an informal hearing remotely upon request as a reasonable accommodation for a person with a disability, if a participant does not have child care or transportation that would enable them to attend the informal hearing, or if the participant believes an in-person hearing would create an undue health risk. The PHA will consider other reasonable requests for a remote informal hearing on a case-by-case basis.

### **Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

As with in-person informal hearings, the platform for conducting remote informal hearings must be accessible to persons with disabilities and the informal hearings must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal hearing process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal hearing is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual his or her inability to participate in the remote informal hearing, and the PHA should consider whether postponing the remote hearing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal hearings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal hearings.



## **Conducting Informal Hearings Remotely**

The PHA must ensure that the lack of technology or inability to use technology for remote informal hearings does not pose a disadvantage to families that may not be apparent to the PHA. The PHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal hearing and, if the family does not have the proper technology to fully participate, either postpone the informal hearing or provide an alternative means of access.

As with in-person informal hearings, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal hearing. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA's essential responsibility is to ensure informal hearings meet the requirements of due process and comply with HUD regulations. Therefore, all PHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements, and will be in compliance with HUD regulations at 24 CFR 982.555 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

The PHA will conduct remote informal hearings via a video conferencing platform, when available. If, after attempting to resolve any barriers, participants are unable to adequately access the video conferencing platform at any point, or upon request, the informal hearing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal hearing will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to scheduling the remote hearing, the PHA will provide the family with login information and/or conferencing call-in information and an electronic copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify the PHA of any known barriers. The PHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

The PHA will follow up with a phone call and/or email to the family at least one business day prior to the remote informal hearing to ensure that the family received all information and is comfortable accessing the video conferencing or call-in platform.

The PHA will ensure that all electronic information stored or transmitted with respect to the informal hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

## **Informal Hearing Procedures**

### ***Notice to the Family [24 CFR 982.555(c)]***

When LHA makes a decision that is subject to informal hearing procedures, the family will be informed of its right to an informal hearing at the same time that the family is informed of the decision.

In cases where LHA 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 the PHA.
- ❖ 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 the PHA’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.

***Scheduling an Informal Hearing [24 CFR 982.555(d)]***

When an informal hearing is required, LHA will proceed with the hearing in a reasonably expeditious manner upon the request of the family.

A request for an informal hearing must be made in writing and delivered to LHA 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 decision or notice to terminate assistance. LHA must schedule and send the notification of the informal hearing to the family within 10 business days of the family’s request.

If the PHA hearing will be conducted remotely, at the time the notice is sent to the family, the family will be notified:

Regarding the processes involved in a remote informal hearing;

That the PHA will provide technical assistance prior to and during the informal hearing, if needed; and

That if the family or any individual witness has any technological, resource, or accessibility barriers, the family may inform the PHA and the PHA will assist the family in either resolving the issue or allow the family to participate in an in-person hearing, as appropriate.

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 that seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made in writing prior to the hearing date. At its discretion, LHA may request documentation of the “good cause” prior to rescheduling the hearing.

If the family does not appear within 20 minutes of the time stated in the letter of notification, the Housing Authority will not reschedule the hearing unless needed as a reasonable accommodation for a person with a disability.

***Pre-Hearing Right to Discovery [24 CFR 982.555(e)]***

Participants and the Housing Authority are permitted pre-hearing discovery rights. 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 LHA documents no later than 12:00 p.m. on the business day prior to the hearing.

***Participant’s Right to Bring Counsel [24 CFR 982.555(e)(3)]***

The family may have a lawyer or other representative at the informal hearing to represent them at their own expense.

### ***Informal Hearing Officer [24 CFR 982.555(e)(4)]***

Informal hearings will be conducted by a person or persons approved by LHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision. The Compliance Officer or his or her designee, upon the approval of the Executive Director, will conduct informal hearings.

### ***Attendance at the Informal Hearing***

A hearing officer and the following applicable persons may attend hearings:

- ❖ A Housing Authority representative(s) and any witnesses for the Housing Authority
- ❖ The participant and any witnesses for the participant
- ❖ The participant's counsel or other representative
- ❖ Any other person approved by LHA as a reasonable accommodation for a person with a disability

### ***Conduct at Hearings***

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)]***

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 that is relevant to the case, for example, a letter written to LHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, and sounds, videotapes, 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:** Evidence based not on a witness' personal knowledge. In and of itself, hearsay evidence carries no weight when making a finding of fact. The hearing officer may include hearsay evidence when considering their decision if it is corroborated by other evidence. Even though hearsay evidence is generally admissible in a hearing, the hearing officer will not base a hearing decision on hearsay alone unless there is clear probative value and credibility of the evidence, and the party seeking the change has met the burden of proof.

If either the PHA (or the family, if required in a remote hearing) 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***

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)]***

In rendering a decision, the hearing officer will consider the following matters:

**LHA Notice to the Family:** The hearing officer will determine if the reasons for the Housing Authority's decision are factually stated in the Notice.

**Discovery:** The hearing officer will determine if the Housing Authority and the family were given the opportunity to examine any relevant documents in accordance with LHA policy.

**LHA Evidence to Support the 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 LHA'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 LHA policies. If the grounds for termination are not specified in the regulations or in compliance with LHA policies, then the decision will be overturned.

The hearing officer will issue a written decision to the family and LHA 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 their 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 Housing Authority’s decision.

**Order:** The hearing report will include a statement of whether LHA’s decision is upheld or overturned. If it is overturned, the hearing officer will instruct LHA to change the decision in accordance with the hearing officer’s determination. In the case of termination of assistance, the hearing officer will instruct LHA to restore the participant’s program status.

***Issuance of Decision [24 CFR 982.555(e)(6)]***

The hearing officer will mail a “Notice of Hearing Decision” to LHA 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 LHA’s file.

***Effect of Final Decision [24 CFR 982.555(f)]***

The Executive Director has the authority to determine that LHA is not bound by the decision of the hearing officer because LHA 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 Housing Authority will mail a “Notice of Final Decision” to the Housing Authority 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 LHA’s file.

**16-III.D. 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 based on 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 LHA’s hearing is pending, but assistance to an applicant may be delayed pending the completion of the information hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or LHA’s informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

**Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

As discussed in Chapters 3 and 11, the notice of denial or termination of assistance for non-citizens 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 pro-ration of assistance;
- ❖ In 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 the LHA upon completion of the USCIS either 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 Housing Authority receives notification that the United States Citizenship and Immigration Services (USCIS) secondary verification failed to confirm eligible immigration status of an applicant or participant, LHA must notify the family of the results, and the family has 30 days from the date of the notification to make an appeal to the USCIS of the verification results.

LHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results. The family must provide a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS to LHA.

LHA 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 an informal hearing. The request for a hearing must be made within 30 days of receipt of the notice of denial or termination, or within 30 days of the receipt of the appeal decision from USCIS.

#### ***Informal Hearing Officer***

LHA will 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. The listing of hearing officers in Section 16-III.C. also applies to this section.

#### ***Evidence***

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 LHA documents no later than 12:00 p.m. on the business day prior to the hearing.

### ***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.

### ***Recording of the Hearing***

The Housing Authority will not provide a transcript of an audiotaped hearing.

### ***Hearing Decision***

LHA will 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)]**

The informal hearing procedures for participant families whose assistance is being terminated based on immigration status, is the same as for other participant families (see Section 16-III.C.).

### **Retention of Documents [24 CFR 5.514(h)]**

The Laurinburg Housing Authority must retain for a minimum of 5 years specific documents that were submitted by the family, or provided to the Housing Authority as part of the USCIS appeal or the LHA informal hearing process.

## **PART IV: OWNER OR FAMILY DEBTS TO THE PHA**

### **16-IV.A. OVERVIEW**

The Housing Authority required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the PHA [24 CFR 982.54].

When an action or inaction of an owner or participant results in the overpayment of housing assistance, LHA holds the owner or participant liable to return any overpayments to the Housing Authority. LHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

### **16-IV.B. REPAYMENT POLICY**

#### **Owner Debts to the PHA**

The owner must repay any amount due to the Housing Authority by an owner within 30 days of the determination of the debt.

If the owner fails to repay the debt within the required period and is entitled to future HAP payments, LHA 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 LHA may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by the Housing Authority. If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment

agreement, LHA will ban the owner from future participation in the program and pursue other modes of collection.

When an owner or participant refuses to repay monies owed, the LHA may utilize other available collection alternatives including, but not limited to, the following:

- ❖ Collection agencies
- ❖ Small claims court
- ❖ Civil law suit
- ❖ State income tax set-off program

### **Family Debts to the PHA [Notice PIH 2018-18]**

Any amount owed to the Laurinburg Housing Authority by an HCV family must be repaid by the family. If the family is unable to repay the debt within 30 days, LHA will offer to enter into a repayment agreement in accordance with the policies below.

The tenant will be required to pay 20% of the money owed in order to establish a repayment agreement. If there is a reoccurrence, the family will not be permitted to enter into a repayment agreement but will be required to pay all monies owed immediately in order for subsidy to be continued. If there is a third occurrence, the family will be terminated from the program.

When a family refuses to repay monies owed to the PHA, in addition to termination of program assistance, the PHA 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

### **Repayment Agreement [24 CFR 792.103]**

The term *repayment agreement* refers to a formal document signed by a tenant or owner and provided to the Housing Authority in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time-periods. The Housing Authority will not enter into more than one repayment agreement. If the family has not fulfilled their existing repayment agreement, the family will be terminated from the program and the debt will be recorded in EIV.

### **General Repayment Agreement Guidelines for Families**

#### ***Down Payment Requirement***

Before executing a repayment agreement with a family, the Housing Authority 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 2018-18 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 2018-18 acknowledges that PHAs have the discretion to establish “thresholds and policies” for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

The PHA has established the following thresholds for repayment of debts:

- Amounts between \$1,000 and the federal or state threshold for criminal prosecution 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***

Any repayment agreement between the Laurinburg Housing Authority and a family must be signed and dated by LHA and by the head of household and spouse/co-head (if applicable).

### ***Due Dates***

All payments are due by the close of business on the 5<sup>th</sup> day of the month. If the 5<sup>th</sup> does not fall on a business day, the due date is the close of business on the first business day after the 5<sup>th</sup>.

### ***Late or Missed Payments***

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the PHA, the PHA will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the PHA will terminate assistance in accordance with the policies in Chapter 12.

If a family receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the PHA will terminate assistance in accordance with the policies in Chapter 12.

### ***No Offer of Repayment Agreement***

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

## **PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)**

### **16-V.A. OVERVIEW**

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].

### **16-V.B. 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].

**16-V.C. SEMAP INDICATORS [24 CFR 985.3 and form HUD-52648]**

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.

A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not be rated under SEMAP indicators 1-7.

| <b>SEMAP Indicators</b>  |
|--|
| <p><b>Indicator 1: Selection from the waiting list</b><br/> <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 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 samples.</li> </ul>   |
| <p><b>Indicator 2: Rent reasonableness</b><br/> <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 at the required times.</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> |

**Indicator 3: Determination of adjusted income****Maximum Score: 20**

- 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.
- Points are based on the percent of files that are calculated and verified correctly, according to the PHA's quality control sample.

**Indicator 4: Utility allowance schedule****Maximum Score: 5**

- This indicator shows whether the PHA maintains an up-to-date utility allowance schedule.
- Points are based on whether the PHA has reviewed the utility allowance schedule and adjusted it when required, according to the PHA's certification.

**Indicator 5: HQS quality control inspections****Maximum Score: 5**

- This indicator shows whether a PHA supervisor re-inspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control re-inspections were completed, according to the PHA's certification.

**Indicator 6: HQS enforcement****Maximum Score: 10**

- This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.
- Points are based on whether the PHA corrects all HQS deficiencies in accordance with required periods, according to the PHA's certification.

**Indicator 7: Expanding housing opportunities****Maximum Points: 5**

- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- 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.
- Points are based on whether the PHA has adopted and implemented written policies in

accordance with SEMAP requirements, according to the PHA's certification.

**Indicator 8: FMR limit and payment standards**

**Maximum Points: 5 points**

- This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA's certification.

**Indicator 9: Annual reexaminations**

**Maximum Points: 10**

- This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are less than two months overdue, according to data from PIC.

**Indicator 10: Correct tenant rent calculations**

**Maximum Points: 5**

- This indicator shows whether the PHA correctly calculates the family's share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

**Indicator 11: Pre-contract HQS inspections**

**Maximum Points: 5**

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection on or before the effective date of the lease and HAP contract, according to data from PIC.

**Indicator 12: Annual HQS inspections**

**Maximum Points: 10**

- This indicator shows whether the PHA inspects each unit under contract at least annually.
- Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.

**Indicator 13: Lease-up**

**Maximum Points: 20 points**

- This indicator shows whether the PHA enters HAP contracts for at least 98 percent of the number of the PHA's baseline voucher units in the ACC for the calendar year ending on or before the PHA's fiscal year, or whether the PHA has expended at least 98 percent of its allocated budget authority for the same calendar year. The PHA can receive 15 points

if 95 to 97 percent of vouchers are leased or budget authority is utilized.

- Points are based on utilization of vouchers and HAP expenditures as reported in the voucher management system (VMS) for the most recently completed calendar year.

**Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances**  
**Maximum Points: 10**

- Only applies to PHAs with mandatory FSS programs.
- This indicator shows whether the PHA has enrolled families in the FSS program as required, and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.
- Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

**Success Rate of Voucher Holders**  
**Maximum Points: 5**

- Only applies to PHAs that have received approval to establish success rate payment standard amounts, and isn't effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.
- This indicator shows whether voucher holders were successful in leasing units with voucher assistance.
- Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.

**Deconcentration Bonus Indicator**  
**Maximum Points: 5**

- Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50 percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50<sup>th</sup> percentile.
- Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points.

## **PART VI: RECORD KEEPING**

### **16-VI.A. OVERVIEW**

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.

#### **16-VI.B. RECORD RETENTION [24 CFR 982.158; 24 CFR 908.101]**

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.

The PHA must keep the last three years of the Form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date [24 CFR 908.101].

The PHA must maintain Enterprise Income Verification (EIV) system Income Reports in the tenant file for the duration of the tenancy but for a period not to exceed three years from the EOP date [Notice PIH 2018-18].

Notice PIH 2014-20 requires PHAs 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 retain the records for a period of three years [24 CFR 5.2002(e)(12)].

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

## **16-VI.C. RECORDS MANAGEMENT**

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

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*.

Prior to utilizing HUD's EIV system, the PHA will adopt and implement 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 section 16-IX.E.

## **PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL**

### **16-VII.A. OVERVIEW**

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 Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that the PHA is subject to.

### **16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e); Notice PIH 2017-13]**

The owner must report the name and address of a child identified as having an elevated blood lead level to the public health department within five business days of being so notified by any other medical health care professional. The owner must also notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days. The PHA may collaborate with the owner on the notification process, such as by agreeing with the owner to provide the required notifications on the owner's behalf.

- Upon notification by the owner, the PHA will provide the public health department written notice of the name and address of any child identified as having an elevated blood lead level within five business days.
- Upon notification by the owner, the PHA will notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days.

### **16-VII.C. 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) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an elevated blood lead level.

If the PHA obtains names and addresses of elevated blood lead level children from the public health department(s), the PHA 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 discussed in Chapter 8, and the reporting requirement discussed above.

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.

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.

## **PART VIII: DETERMINATION OF INSUFFICIENT FUNDING**

### **16-VIII.A. OVERVIEW**

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.

### **16-VIII.B. METHODOLOGY**

The PHA 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 and funding reserves, 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.

## **PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY**

### **16-IX.A. OVERVIEW**

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.”

### **16-IX.B. 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 their safety or the safety of others, or suffer substantial emotional distress.

### **16-IX.C. NOTIFICATION [24 CFR 5.2005(a)]**

#### **Notification to Public**

The PHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

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, see Exhibit 16-1)

A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (see Exhibit 16-2)

A copy of the PHA's emergency transfer plan (Exhibit 16-3)

A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383 (Exhibit 16-4)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibits 16-1 and 16-2)

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.

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 (see section 3-III.G).

The PHA will provide all participants with information about VAWA at the time of admission (see section 5-I.B) and at annual reexamination. The PHA will also include information about VAWA in notices of termination of assistance, as provided in section 12-II.F.

The VAWA information provided to applicants and participants will consist of the notices in Exhibits 16-1 and 16-2.

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.

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.

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.

#### **16-IX.D. 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].

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.

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.

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.

**16-IX.E. 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.

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.

**EXHIBIT 16-1: SAMPLE NOTICE OF OCCUPANCY RIGHTS UNDER THE  
VIOLENCE AGAINST WOMEN ACT, FORM HUD-5380**

**[Insert Name of Housing Provider]**

**Notice of Occupancy Rights under the Violence Against Women Act<sup>2</sup>**

**To all Tenants and Applicants**

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.<sup>3</sup> The U.S. Department of Housing and Urban Development (HUD) is the federal agency that oversees that the housing choice voucher program is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

**Protections for Applicants**

If you otherwise qualify for assistance under the housing choice voucher program, you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

**Protections for Tenants**

If you are receiving assistance under the housing choice voucher program, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under the housing choice voucher program solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

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<sup>2</sup> Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

<sup>3</sup> Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.



## **Removing the Abuser or Perpetrator from the Household**

The PHA may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If the PHA chooses to remove the abuser or perpetrator, the PHA may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, the PHA must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, the PHA must follow federal, state, and local eviction procedures. In order to divide a lease, the PHA may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

## **Moving to Another Unit**

Upon your request, the PHA may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, the PHA may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

- 1. You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.
- 2. You expressly request the emergency transfer.** Your housing provider may choose to require that you submit a form, or may accept another written or oral request.
- 3. You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

**OR**

**You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer.** If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

The PHA will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

The PHA's emergency transfer plan provides further information on emergency transfers, and the PHA must make a copy of its emergency transfer plan available to you if you ask to see it.

### **Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking**

The PHA can, but is not required to, ask you to provide documentation to "certify" that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from the PHA must be in writing, and the PHA must give you at least 14 business days (Saturdays, Sundays, and federal holidays do not count) from the day you receive the request to provide the documentation. The PHA may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to the PHA as documentation. It is your choice which of the following to submit if the PHA asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by the PHA with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, "professional") from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that they believe that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that the PHA has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, the PHA does not have to provide you with the protections contained in this notice.

If the PHA receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), the PHA has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the

conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, the PHA does not have to provide you with the protections contained in this notice.

### **Confidentiality**

The PHA must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

The PHA must not allow any individual administering assistance or other services on behalf of the PHA (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

The PHA must not enter your information into any shared database or disclose your information to any other entity or individual. The PHA, however, may disclose the information provided if:

- You give written permission to the PHA to release the information on a time limited basis.
- The PHA needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires the PHA or your landlord to release the information.

VAWA does not limit the PHA's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

### **Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated**

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, the PHA cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if the PHA can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

1. Would occur within an immediate time frame, and
2. Could result in death or serious bodily harm to other tenants or those who work on the property.

If the PHA can demonstrate the above, the PHA should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

### **Other Laws**

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to

additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

### **Non-Compliance with The Requirements of This Notice**

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **[insert contact information for any intermediary, if applicable]** or **[insert HUD field office]**.

### **For Additional Information**

You may view a copy of HUD's final VAWA rule at: <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>.

Additionally, the PHA must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact **[insert name of program or rental assistance contact information able to answer questions on VAWA]**.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact **[Insert contact information for relevant local organizations]**.

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact **[Insert contact information for relevant organizations]**

Victims of stalking seeking help may contact **[Insert contact information for relevant organizations]**.

**Attachment:** Certification form HUD-5382 **[form approved for this program to be included]**

**EXHIBIT 16-2: CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING AND ALTERNATE DOCUMENTATION,  
FORM HUD-5382**

**CERTIFICATION OF  
DOMESTIC VIOLENCE,  
DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING,  
AND ALTERNATE DOCUMENTATION**

**U.S. Department of Housing  
and Urban Development**

OMB Approval No. 2577-0286  
Exp. 06/30/2017

**Purpose of Form:** The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

**Use of This Optional Form:** If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

**Submission of Documentation:** The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

**Confidentiality:** All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to

by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

1. Date the written request is received by victim: \_\_\_\_\_

2. Name of victim: \_\_\_\_\_

3. Your name (if different from victim's): \_\_\_\_\_

4. Name(s) of other family member(s) listed on the lease: \_\_\_\_\_

5. Residence of victim: \_\_\_\_\_

6. Name of the accused perpetrator (if known and can be safely disclosed): \_\_\_\_\_

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

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

10. Location of incident(s): \_\_\_\_\_

|  |
|--|
| In your own words, briefly describe the incident(s):<br>_____<br>_____<br>_____<br>_____ |
|--|

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_

**Public Reporting Burden:** The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

**EXHIBIT 16-3: EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC  
VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING  
(HCV VERSION)**

Attachment: Certification form HUD-5382

**[Insert name of covered housing provider]**

**Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual  
Assault, or Stalking  
Housing Choice Voucher Program**

**Emergency Transfers**

The PHA is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),<sup>4</sup> the PHA allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.<sup>5</sup> The ability of the PHA to honor such request for tenants currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether the PHA has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the federal agency that oversees that the **public housing and housing choice voucher (HCV) programs** are in compliance with VAWA.

**Eligibility for Emergency Transfers**

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L, is eligible for an emergency transfer if the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.

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<sup>4</sup>Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

<sup>5</sup>Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.



A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

### **Emergency Transfer Request Documentation**

To request an emergency transfer, the tenant shall notify the PHA's management office and submit a written request for a transfer to **any PHA office**. The PHA will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under the PHA's program; OR
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

### **Confidentiality**

The PHA will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives the PHA written permission to release the information on a time-limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person or persons that committed an act of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights under the Violence against Women Act for All Tenants for more information about the PHA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

### **Emergency Transfer Timing and Availability**

The PHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. The PHA will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. The PHA may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If the PHA has no safe and available units for which a tenant who needs an emergency transfer is eligible, the PHA will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, the PHA will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

## **Emergency Transfers: Housing Choice Voucher (HCV) Program**

Tenant-based assistance: If you are a participant in the tenant-based HCV program and request an emergency transfer as described in this plan, the PHA will assist you to move to a safe unit quickly using your existing voucher assistance. The PHA will make exceptions to program regulations restricting moves as required.

At your request, the PHA will refer you to organizations that may be able to further assist you.

Project-based assistance: If you are assisted under the project-based voucher (PBV) program, you may request an emergency transfer under the following programs for which you are not required to apply:

- Tenant-based voucher, if available
- Project-based assistance in the same project (if a vacant unit is available and you determine that the vacant unit is safe)
- Project-based assistance in another development owned by the PHA

Emergency transfers under VAWA will take priority over waiting list admissions for these types of assistance.

You may also request an emergency transfer under the following programs for which you are required to apply:

- Public housing program
- PBV assistance in another development not owned by the PHA
- **[Insert other programs the PHA provides, such as LIHTC or HOME]**

Emergency transfers will not take priority over waiting list admissions for these programs. At your request, the PHA will refer you to organizations that may be able to further assist you.

## **Safety and Security of Tenants**

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe.

Tenants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Tenants who have been victims of sexual assault may call the Rape, Abuse, and Incest National Network's National Sexual Assault Hotline at 1-800-656-HOPE, or visit the online hotline at: <https://ohl.rainn.org/online/>.

Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at: <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

**Attachment:** Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

**EXHIBIT 16-4: EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, FORM HUD-5383**

**EMERGENCY TRANSFER  
REQUEST FOR CERTAIN  
VICTIMS OF DOMESTIC  
VIOLENCE, DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING**

**U.S. Department of Housing  
and Urban Development**

OMB Approval No. 2577-0286  
Exp. 06/30/2017

**Purpose of Form:** If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

**The requirements you must meet are:**

**(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.**

If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.

**(2) You expressly request the emergency transfer.** Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.

**(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

**OR**

**You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer.** If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

**Submission of Documentation:** If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

**Confidentiality:** All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER**

1. Name of victim requesting an emergency transfer: \_\_\_\_\_

2. Your name (if different from victim's) \_\_\_\_\_

3. Name(s) of other family member(s) listed on the lease: \_\_\_\_\_  
\_\_\_\_\_

4. Name(s) of other family member(s) who would transfer with the victim: \_\_\_\_\_  
\_\_\_\_\_

5. Address of location from which the victim seeks to transfer: \_\_\_\_\_

6. Address or phone number for contacting the victim: \_\_\_\_\_

7. Name of the accused perpetrator (if known and can be safely disclosed): \_\_\_\_\_

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

9. Date(s), Time(s) and location(s) of incident(s): \_\_\_\_\_  
\_\_\_\_\_

10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. \_\_\_\_\_

11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.  
\_\_\_\_\_  
\_\_\_\_\_

12. If voluntarily provided, list any third-party documentation you are providing along with this notice: \_\_\_\_\_

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_

## EXHIBIT 16-5: MODEL OWNER NOTIFICATION OF RIGHTS AND OBLIGATIONS

- [Insert Name of Housing Provider]
  - **NOTIFICATION OF YOUR RIGHTS AND OBLIGATIONS**
  - **UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA)**
- VAWA provides protections for Section 8 Housing Choice Voucher (HCV) and PBV applicants, tenants, and participants from being denied assistance on the basis or as a direct result of being a victim of domestic violence, dating violence, sexual assault and stalking.
- **Purpose**
- Many of VAWA’s protections to victims of domestic violence, dating violence, sexual assault and stalking involve action by the public housing agency (PHA), but some situations involve action by owners of assisted housing. The purpose of this notice (herein called “Notice”) is to explain your rights and obligations under VAWA, as an owner of housing assisted through [insert name of housing provider] HCV program. Each component of this Notice also provides citations to HUD’s applicable regulations.
- **Denial of Tenancy**
- *Protections for applicants:* Owners cannot deny tenancy based on the applicant having been or currently being a victim of domestic violence, dating violence, sexual assault, or stalking. However, the applicant must be otherwise eligible for tenancy. (See 24 Code of Federal Regulations (CFR) 982.452(b)(1).)
- **Eviction**
- *Protections for HCV participants:* Incidents or threats of domestic violence, dating violence, sexual assault, or stalking will not be considered a serious or repeated lease violation by the victim, or good cause to terminate the tenancy of the victim (24 CFR 5.2005(c)). Protection also applies to criminal activity related directly to domestic violence, dating violence, sexual assault, or stalking, conducted by a member of a tenant’s household or any guest or other person under the tenant’s control, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking (24 CFR 5.2005(b)(2)).
- *Limitations of VAWA protections:*
- a. Nothing in the VAWA Final Rule limits the authority of an owner, when notified of a court order, to comply with a court order with respect to (24 CFR 5.2005(d)(1)):
  - 1) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or
  - 2) The distribution or possession of property among members of a household in a case.
- b. Nothing in the VAWA Final Rule limits an owner from evicting a victim of domestic violence, dating violence, sexual assault, or stalking for a lease violation that is not premised on an act of domestic violence, dating violence, sexual assault, or stalking, as long as the owner does not subject the victim to more demanding standards than other tenants when deciding whether to evict. (See 24 CFR 5.2005(d)(2).)
- c. Nothing in the VAWA Final Rule limits an owner from evicting a tenant (including the victim of domestic violence, dating violence, sexual assault, or stalking) if the owner can demonstrate an

actual and imminent threat to other tenants or those employed at or providing services to the HCV property would be present if the tenant or lawful occupant is not evicted. (See 24 CFR 5.2005(d)(3).)

i. In this context, words, gestures, actions, or other indicators will be considered an “actual and imminent threat” if they meet the following standards: An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur. (See 24 CFR 5.2003.)

- ii. Any eviction due to “actual and imminent threat” should be utilized by an owner only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents. (See 24 CFR 5.2005(d)(4).)

- **Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

- If an applicant or tenant requests VAWA protection based on status as a victim of domestic violence, dating violence, sexual assault, or stalking, the owner has the option to request that the victim document or provide written evidence to demonstrate that the violence occurred. However, nothing in HUD’s regulation requires a covered housing provider to request this documentation. (See 24 CFR 5.2007(b)(3).)

- If the owner chooses to request this documentation, the owner must make such request in writing. The individual may satisfy this request by providing any one document type listed under 24 CFR 5.2007(b)(1):

- a. Form HUD-55383 (Self-Certification Form); or

- b. A document: 1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse:

- 2) Signed by the applicant or tenant; and

- 3) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under 24 CFR part 5, subpart L, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or

- c. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or

- d. At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

- The owner must accept any of the above items (a – c). The owner has discretion to accept a statement or other evidence (d).

- The owner is prohibited from requiring third-party documentation of the domestic violence, dating violence, sexual assault, or stalking, unless the submitted documentation contains conflicting

information.

- If the owner makes a written request for documentation, the owner may require submission of that documentation within 14 business days after the date that the individual received the written request for documentation. (24 CFR 5.2007(a)(2)). The owner may extend this time period at its discretion. During the 14 business day period and any granted extensions of that time, no adverse actions, such as evictions or terminations, can be taken against the individual requesting VAWA protection.
- Once a victim provides documentation of domestic violence, dating violence, sexual assault, or stalking, the owner is encouraged to acknowledge receipt of the documentation in a timely manner.
- If the applicant or tenant fails to provide documentation that meets the criteria in 24 CFR 5.2007 within 14 business days after receiving the written request for that documentation or within the designated extension period, nothing in VAWA Final Rule may be construed to limit the authority of the covered housing provider to:
  - a. Deny admission by the applicant or tenant to the housing or program;
  - b. Deny assistance under the covered housing program to the applicant or tenant;
  - c. Terminate the participation of the tenant in the covered housing program; or
  - d. Evict the tenant, or a lawful occupant that commits a violation of a lease.
- An individual's failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it preclude the individual's ability to raise an incident of domestic violence, dating violence, sexual assault, or stalking at eviction or termination proceedings.
- **Moves**
  - A victim of domestic violence, dating violence, sexual assault, or stalking may move in violation of their lease if the move is required to protect their safety. If a move results in the termination of the Housing Assistance Payment Contract, the lease is automatically terminated.
- **Lease Bifurcation**
  - Owners may choose to bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual. (See 24 CFR 5.2009(a).) If an owner chooses to bifurcate the lease, the owner must comply with the reasonable time to establish eligibility under the covered housing program or find alternative housing following lease bifurcation provision in 24 CFR 5.2009(b). VAWA protections, including bifurcation, do not apply to guests or unreported members of a household or anyone else residing in a household who is not a tenant.
  - Eviction, removal, termination of occupancy rights, or termination of assistance must be effected in accordance with the procedures prescribed by federal, state, or local law for termination of leases.

To avoid unnecessary delay in the bifurcation process, HUD recommends that owners seek court-ordered eviction of the perpetrator pursuant to applicable laws. This process results in the underlying lease becoming null and void once the owner regains possession of the unit. The owner would then execute a new lease with the victim.



## **Evictions Due to “Actual and Imminent Threat” or Violations Not Premised on Abuse**

The VAWA Final Rule generally prohibits eviction on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for assistance, participation or occupancy. (See 24 CFR 5.2005.)

However, the VAWA Final Rule does not prohibit an owner from evicting a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. Nor does the VAWA Final Rule prohibit an owner from evicting a tenant if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to property of the owner would be present if that tenant or lawful occupant is not evicted or terminated from assistance. (See 5.2005(d)(2) and (3).)

In order to demonstrate an actual and imminent threat to other tenants or employees at the property, the covered housing provider must have objective evidence of words, gestures, actions, or other indicators that meet the standards in the following definition:

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk;
- The nature and severity of the potential harm;
- The likelihood that the potential harm will occur; and
- The length of time before the potential harm would occur.

(See 24 CFR 5.2003 and 5.2005(d)(2).)

## **Confidentiality**

Any information submitted to a covered housing provider under 24 CFR 5.2007, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, must be maintained in strict confidence by the covered housing provider. (See 24 CFR 5.2007(c).)

Employees of the owner (or those within their employ, e.g., contractors) must not have access to the information unless explicitly authorized by the owner for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law (e.g., the information is needed by an employee to provide the VAWA protections to the victim).

The owner must not enter this information into any shared database, or disclose this information to any other entity or individual, except to the extent that disclosure is:

- a. Requested or consented to in writing by the individual (victim) in a time-limited release;
- b. Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or
- c. Otherwise required by applicable law.
- When communicating with the victim, owners must take precautions to ensure compliance with

these confidentiality requirements.

### **Service Providers**

[insert name of housing provider] has extensive relationships with local service providers. [insert name of housing provider] staff are available to provide referrals to shelters, counselors, and advocates. These resources are also provided in [insert name of housing provider] Annual and 5-Year Plan, Administrative Plan, VAWA Notice of Occupancy Rights, and Emergency Transfer Plan. A list of local service providers is attached to this Notice.

### **Definitions**

**Actual and imminent threat** refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

**Affiliated individual**, with respect to an individual, means:

- (1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
- (2) Any individual, tenant, or lawful occupant living in the household of that individual.

**Bifurcate** means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

**Dating violence** means violence committed by a person:

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - (i) The length of the relationship;
  - (ii) The type of relationship; and
  - (iii) The frequency of interaction between the persons involved in the relationship.

**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 "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a

romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

- **Sexual assault** means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

**Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's individual safety or the safety of others; or
- (2) Suffer substantial emotional distress.

**VAWA** means the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.).

**Attached:**

- Legal services and the domestic violence resources for the Metro area
- Form HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
- **[insert name of housing provider]** VAWA Notice of Occupancy Rights

## CHAPTER 17: SECTION 8 PROJECT-BASED VOUCHERS (PBV)

**NOTE:** The Project-Based Voucher Program (Chapters 17 and 18) follows the Section 8 HCV policy as outlined in the HCV Administrative Plan requirements in all instances where the Project-Based Vouchers (PBV) and the RAD Project-Based regulations are silent.

### **Introduction**

This Plan describes HUD regulations and PHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the PHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the PHA's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the PHA and the owner will select a family to receive PBV assistance.

Part VII: Occupancy.

This part discusses occupancy requirements related to the lease and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be re-determined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.

## **PART I: GENERAL REQUIREMENTS**

### **17-I-A: OVERVIEW [24 CFR 983.5]**

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 voucher program budget authority 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 Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

The Laurinburg Housing Authority will operate a project-based voucher program using up to 20 percent of its budget authority for standard project-based assistance (excluding RAD) and may utilize an additional 10 percent of its HCV as allowed under the HOTMA legislation. The Authority reserves the right to increase the PBV units to the extent allowed under current HUD regulations at the time of PBV assistance approval by HUD and the subsequent award.

PBV assistance may be attached to existing housing, 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 a HAP Contract (Agreement) or a HAP contract, the PHA is not required to reduce the number of these units if the amount of budget authority 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 Annual Contributions Contract (ACC) [24 CFR 983.6].

### **Additional Project-Based Units [FR Notice 1/18/17; Notice PIH 2017-21]**

The PHA may project-base an additional 10 percent of its units above the 20 percent program limit. The units may be distributed among one, all, or a combination of the categories as long as the total number of units does not exceed the 10 percent cap. Units qualify under this exception 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) and contained in the Continuum of Care Interim Rule at 24 CFR 578.3.
- 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.

Only units that are under a HAP contract that was first executed on or after April 18, 2017, are covered by the 10 percent exception.

### **Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]**

PBV units under the RAD program and HUD-VASH PBV set-aside vouchers do not count toward the 20 percent limitation when PBV assistance is attached to them.

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. The unit must be covered under a PBV HAP contract that first became effective on or after April 18, 2017.

### **17-I-B: 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.

Except as otherwise noted in this chapter, or unless specifically prohibited by the 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.

### **17-I-C: RELOCATION REQUIREMENTS [24 CFR 983.7]**

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR Part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. LHA may not use voucher program funds to cover relocation costs, except that it may use administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefit is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR Part 24, Subpart B. It is the responsibility of the Housing Authority to ensure the owner complies with these requirements. Further any public housing unit which will not be assisted in the PBV program and will no longer be subsidized directly will allow the tenant to qualify for preference as RAD Conversion Assistance (Government Action) priority, under the Section 8 Housing Choice Voucher Program.

### **17-I-D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]**

The Housing Authority will comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and

authorities cited at 24 CFR 5.105(a). In addition, the Housing Authority will comply with the PHA Plan certification on civil rights and affirmatively furthering fair housing submitted in accordance with 24 CFR 903.7(o).

## **PART II: PBV OWNER PROPOSALS**

### **17-II-A: OVERVIEW**

The PHA must describe the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per building [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57].

### **17-II-B: OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51]**

The PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by either of the following two methods.

- ❖ PHA Request for PBV Proposals. LHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the PHA request. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
- ❖ The PHA may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

RAD Conversion PBV shall not require a proposal process and PBV shall be established by HUD Regulation under the Rental Assistance Demonstration (RAD) Program.

### **Solicitation and Selection of PBV Proposals [24 CFR 983.51(b) and (c)]**

LHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by LHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the PHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

**PHA Request for Proposals for Rehabilitated and Newly Constructed Units:** LHA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the following newspapers and trade journals:

*The Laurinburg Exchange and The Fayetteville Observer*

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements.

In addition, LHA will post the RFP and the proposal submission, rating, and ranking procedures on its electronic web site. LHA will publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the PHA estimates that it will be able to assist under the funding the PHA is making available. Proposals will be due in the PHA office by close of business 30 calendar days from the date of the last publication or at a later date if so stated in the advertisement.

In order for the proposal to be considered, the owner must submit the proposal to the PHA by the published deadline date. The proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be given consideration. LHA will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

- ❖ Owner experience and capability to build or rehabilitate housing as identified in the RFP;
- ❖ Extent to which the project furthers the PHA goal of deconcentrating poverty and expanding housing and economic opportunities;  
If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
- ❖ Projects will be ranked on scoring criteria as set forth in the request for proposal.

**PHA Requests for Proposals for Existing Housing Units:** The PHA will advertise its request for proposals (RFP) for existing housing in the following newspapers and trade journals.

*The Laurinburg Exchange and the Fayetteville Observer*

In addition, LHA will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site. The PHA will periodically publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the PHA estimates that it will be able to assist under the funding the PHA is making available. Owner proposals will be accepted on a first-come, first-served basis and will be evaluated using the following criteria:

- ❖ Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;
- ❖ Extent to which the project furthers the PHA goal of deconcentrating poverty and expanding housing and economic opportunities;



- ❖ If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
- ❖ Extent to which units are occupied by families that are eligible to participate in the PBV program.

**PHA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program:** LHA will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits on an ongoing basis. LHA may periodically advertise that it is accepting proposals, in the following newspapers and trade journals:

*The Laurinburg Exchange and The Fayetteville Observer*

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements

In addition to, or in place of advertising, LHA may also directly contact specific owners that have already been selected for Federal, State, or Local housing assistance based on a previously held competition, to inform them of available PBV assistance. Proposals will be reviewed on a first-come, first-served basis. LHA will evaluate each proposal on its merits using the following factors:

- ❖ Extent to which the project furthers the PHA goal of deconcentrating poverty and expanding housing and economic opportunities;
- ❖ and the extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

**PHA-Owned Units [24 CFR 983.51(e) and 983.59]:** 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 Administrative Plan. If LHA selects a proposal for housing that is owned or controlled by LHA, it must identify the entity that will review the proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of LHA-owned units or units to be managed by LHA, the initial contract rent must be approved by an independent entity or the HUD Field Office based on an appraisal by a licensed, state-certified appraiser. In addition, housing quality standards inspections must be conducted by an independent entity. The independent entity that performs these program services may be the

unit of general local government for LHA's jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government), another unit of local government, or another HUD-approved public or private independent entity.

If the proposal for LHA-owned housing is proposed, the proposal will be submitted to the HUD Field Office for review. Review and approval of proposal selection shall be by the HUD Field Office including the approval of the rent structure.

The Housing Authority 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 utilize a third party independent inspector. The inspection will be conducted by another Housing Authority or another Public or Private entity approved by HUD. Should the PHA choose to use a public or private entity that is not a unit of Local Government, HUD Field Office approval will be secured before the entity makes inspections.

The PHA may only compensate the independent entity and appraiser 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 and appraiser for their services. The PHA, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity. RAD units owned by the PHA with a HAP contract managed by the PHA shall be managed through contract by a Third-Party non-profit as required in Accounting Brief #2, page 7.

**PHA Notice of Owner Selection [24 CFR 983.51(d)]:** LHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

Within 10 business days of the PHA making the selection, or within 10 days of HUD Field Office approval for units with PHA involvement, the PHA will notify the selected owner in writing of the owner's selection for the PBV program. The PHA will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

In addition, the PHA will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers and trade journals the PHA used to solicit the proposals, if more than one proposal was submitted. The announcement will include the name of the owner that was selected for the PBV program.

The PHA will make available to any interested party its rating and ranking sheets and documents that identify the PHA basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. The PHA will not make available sensitive or privileged owner information, such as financial statements and similar information about the owner. The PHA will make these documents available for review at the Housing Authority office during normal business hours.

The cost for reproduction of allowable documents will be \$.25 per page. (**\*Not applicable to RAD PBV.**)

**17-II-C: HOUSING TYPE [24 CFR 983.52]**

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of PHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing.

The PHA must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The PHA choice of housing type must be reflected in its solicitation for proposals.

**17-II-D: PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS**

**Ineligible Housing Types [24 CFR 983.53]:** LHA will not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; cooperative housing; and transitional housing. In addition, the PHA may not attach or pay PBV assistance for a unit occupied by an owner. The PHA may not select or enter into an agreement to enter into a HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

***High-rise Elevator Projects for Families with Children [24 CFR 983.53(b)]:*** LHA may use high-rise elevator buildings for families with children if it makes a determination that there is no practical alternative and HUD approves the PHA determination. The PHA may make this initial determination for its project-based voucher program, in whole or in part, and need not review each project on a case-by-case basis, and HUD may approve on the same basis. The Laurinburg Housing Authority will not use high-rise elevator projects for families with children.

**Subsidized Housing [24 CFR 983.54]:** A PHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- ❖ A public housing unit;
- ❖ A unit subsidized with any other form of Section 8 assistance;
- ❖ A unit subsidized with any governmental rent subsidy;
- ❖ A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- ❖ A unit subsidized with Section 236 rental assistance payments (except that a PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);
- ❖ A Section 202 project for non-elderly with disabilities;

- ❖ Section 811 project-based supportive housing for persons with disabilities;
- ❖ Section 202 supportive housing for the elderly;
- ❖ A Section 101 rent supplement project;
- ❖ A unit subsidized with any form of tenant-based rental assistance;
- ❖ A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or the PHA in accordance with HUD requirements.

**17-II-E: SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55]**

The PHA may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR 4.13] and other requirements. The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

The PHA must submit the necessary documentation to HUD for a subsidy layering review. The PHA will not enter into an agreement to enter into a HAP contract or a HAP contract until HUD (or an independent entity approved by HUD) has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

**17-II-F: CAP ON NUMBER OF PBV UNITS IN EACH BUILDING**

**25 Percent per Building Cap [24 CFR 983.56(a)]:**

In general, the PHA may not select a proposal to provide PBV assistance for units in a building or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a building, if the total number of dwelling units in the building that will receive PBV assistance during the term of the PBV HAP contract is more than 25 percent of the number of dwelling units (assisted or unassisted) in the building.

RAD developments will be 100% subsidized in accordance RAD regulations. PBV Projects with 50% Elderly/Disabled occupancy at the time of conversion under RAD will be exempt from the service provision requirement.

**Exceptions to 25 Percent per Building Cap [24 CFR 983.56(b)]:** Exceptions are allowed and PBV units are not counted against the 25 percent per building cap if:

- ❖ The units are in a single-family building (one to four units);
- ❖ The units are *excepted units* in a multifamily building because they are specifically made available for elderly or disabled families or families receiving supportive services (also known as *qualifying families*).

LHA will include in the Administrative Plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify a family must have at least one member receiving at least one qualifying supportive service. A PHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered.

If a family, at the time of initial tenancy is receiving and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the Administrative Plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

The Housing Authority must monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. The Administrative Plan must state the form and frequency of such monitoring.

The Laurinburg Housing Authority may select to assign subsidy to more than 25% of the units in a development provided that supportive services or services to special needs populations to assist those populations in the maintenance of independent living, or to improve quality of life. Services shall be defined in the Service Plan presented in the application to provide Project-Based Housing Voucher Assistance. Service provision and participation by families will be monitored at least semi-annually. Disciplinary action will be taken for failure to participate as outlined in the Service Plan. Failure of a family to participate or correct the non-compliance may result in termination from the PBV Program. A family who loses classification as a qualifying family is no longer eligible for assistance in the PBV program. The owner of the PBV unit may terminate the lease of a family that has its rental assistance terminated for failure to comply as specified in the lease.

For families in a property requiring supportive services, the scope of services may include case management, family counseling, credit counseling, credit repair, enrollment in additional educational programs, employment training and/or participation in the Family Self-Sufficiency Program. Other services may be secured or referrals made as the needs of the family dictate. Requirement of the family for participation shall be five years as outlined in the Service Plan and in the family's goals. A tenant must maintain participation in one or more supportive service and meet the HUD definition of qualifying family to remain eligible for a PBV unit. (A participating family must be actively in case management interviews and making milestone steps in meeting goals.

Special needs or elderly families may choose to participate in services or programs as dictated by the specific Service Plan for the development and for the individual family involved. Services may include but are not limited to counseling, rehabilitation therapy, group meetings, health screenings, and skills training.

**Promoting Partially-Assisted Buildings [24 CFR 983.56(c)]:** LHA may establish local requirements designed to promote PBV assistance in partially assisted buildings. A *partially*

***assisted building*** is a building in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3]. LHA may establish a per-building cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily building containing excepted units or in a single-family building. The Housing Authority may also determine not to provide PBV assistance for excepted units, or may establish a per-building cap of less than 25 percent.

## **17-II-G: SITE SELECTION STANDARDS**

### **Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR 983.57(b)]:**

LHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless it has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR 903 and the Administrative Plan. In addition, prior to selecting a proposal, the Housing Authority must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 CFR 982.401(l).

It is the Laurinburg Housing Authority's goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal LHA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less. However, LHA will grant exceptions to the 20 percent standard where it is determined that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

- ❖ A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, Choice Neighborhood or Renewal Community;
- ❖ A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;
- ❖ A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;
- ❖ A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;
- ❖ A census tract where there has been an overall decline in the poverty rate within the past five years; or
- ❖ A census tract where there are meaningful opportunities for educational and economic advancement.

**NOTE:** This section is not applicable to existing Public Housing units converted to PBV under a RAD Conversion.

**Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]:**

The Housing Authority may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- ❖ Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- ❖ Have adequate utilities and streets available to service the site;
- ❖ Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- ❖ Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- ❖ Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

**New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]:** In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- ❖ The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- ❖ The site must have adequate utilities and streets available to service the site;
- ❖ The site must not be located in an area of minority concentration unless the PHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- ❖ The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- ❖ The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- ❖ The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- ❖ The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- ❖ Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

## **17-II-H: ENVIRONMENTAL REVIEW [24 CFR 983.58]**

LHA 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 Housing Authority 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.

LHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and LHA, 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 Housing Authority must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The Housing Authority 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.

RAD environmental reviews shall be in accordance with RAD regulatory requirements.

## **PART III: DWELLING UNITS**

### **II7-III-A: 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.

### **17-III-B: HOUSING QUALITY STANDARDS [24 CFR 983.101]**

The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program. HQS requirements for shared housing, cooperative 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, and 40 CFR 745.227, apply to the PBV program.



### **17-III-C: 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 Housing Authority 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)

### **17-III-D: INSPECTING UNITS**

**Pre-selection Inspection [24 CFR 983.103(a)]:** The Housing Authority must examine the proposed site before the proposal selection date. If the units to be assisted already exist, LHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, the Housing Authority may not execute the HAP contract until the units fully comply with HQS.

**Pre-HAP Contract Inspections [24 CFR 983.103(b)]:** LHA must inspect each contract unit before execution of the HAP contract. The Housing Authority may not enter into a HAP contract covering a unit until the unit fully complies with HQS. RAD initial inspections at conversion shall be by a Third Party Inspector.

**Turnover Inspections [24 CFR 983.103(c)]:** Before providing assistance to a new family in a contract unit, LHA must inspect the unit and certify compliance. The Housing Authority may not provide assistance on behalf of the family until the unit fully complies with HQS.

**Annual Inspections [24 CFR 983.103(d)]:** At least annually during the term of the HAP contract, the Housing Authority 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. Turnover inspections are not counted toward meeting this annual inspection requirement. If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, LHA must re-inspect 100 percent of the contract units in the building.

**Other Inspections [24 CFR 983.103(e)]:** LHA will inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The Housing Authority must take into account complaints and any other information coming to its attention in scheduling inspections.

LHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS. In conducting Housing Authority supervisory quality control HQS inspections, LHA 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 or controlled units, an annual inspection of all units will be performed by a unit of Local government, or other independent agency designated by the Housing Authority and approved by HUD. The independent entity must furnish a copy of each annual inspection report to LHA and to the HUD Field Office where the project is located. The Housing Authority 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.

## **PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS**

### **17-IV-A: OVERVIEW [24 CFR 983.151]**

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance.

Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

### **17-IV-B: AGREEMENT TO ENTER INTO HAP CONTRACT**

In order to offer PBV assistance in rehabilitated or newly constructed units, the Housing Authority must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(a)]. In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and the PHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(b)].

**Content of the Agreement [24 CFR 983.152(c)]:** At a minimum the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- ❖ Site and the location of the contract units;
- ❖ Number of contract units by area (size) and number of bedrooms and bathrooms;
- ❖ Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- ❖ Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- ❖ An indication of whether or not the design and construction requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- ❖ Estimated initial rents to owner for the contract units;
- ❖ Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications and plans. For new construction units, the description must include the working drawings and specifications.

- ❖ Any additional requirements for quality, architecture, or design over and above HQS.

**Execution of the Agreement [24 CFR 983.153]:** The Agreement must be executed promptly after PHA notice of proposal selection to the selected owner. However, the PHA may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the PHA may not enter into the Agreement until the environmental review is completed and the PHA has received environmental approval.

The Laurinburg Housing Authority will enter into the Agreement with the owner within 10 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

#### **17-IV-C: CONDUCT OF DEVELOPMENT WORK**

**Labor Standards [24 CFR 983.154(b)]:** If an Agreement covers the development of nine or more contract units (whether or not completed in stages) and dependent upon the funding used for the development, the owner and the owner's contractors and subcontractors may be required to pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates. The owner, contractors, and subcontractors may also be required to comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR Part 5, and other applicable federal labor relations laws and regulations. LHA will monitor compliance with labor standards when the funding used for development requires compliance with these regulations.

**Owner Disclosure [24 CFR 983.154(d) and (e)]:** The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs. The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

**17-IV-D: COMPLETION OF HOUSING:** The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

**Evidence of Completion [24 CFR 983.155(b)]:** At a minimum, the owner must submit the following evidence of completion to the Housing Authority in the form and manner required by LHA:

- ❖ Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and
- ❖ Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At the discretion of LHA, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

LHA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. The Housing Authority will specify any additional documentation requirements in the Agreement to enter into HAP contract. In the case of LHA controlled units, the request for additional information may be generated by the HUD Field Office.

**PHA Acceptance of Completed Units [24 CFR 983.156]:** Upon notice from the owner that the housing is completed, the Housing Authority must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. LHA or the HUD Field Office for PHA controlled units must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, the Housing Authority must not enter into the HAP contract. If the Housing Authority and/or HUD Field Office determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the Housing Authority must submit the HAP contract for execution by the owner and must then execute the HAP contract.

## **PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)**

### **17-V-A: OVERVIEW**

LHA 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. The HAP contract must be in the form required by HUD [24 CFR 983.202].

### **17-V-B: 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 building that will exceed the 25 percent per building cap, which will be set-aside for occupancy by qualifying families; 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]:** LHA may not enter into a HAP contract until each contract unit has been inspected and it has been determined that the unit complies with the Housing Quality Standards (HQS). 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.

For existing housing, the HAP contract will be executed within 10 business days of the PHA determining that all units pass HQS. In the case of PHA controlled units, the HAP contract will be executed when approved by the HUD Field Office. The tenant **must** execute the lease and move into the property within ten (10) business days of the PHA's determination that the unit passes HQS.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of the PHA determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion. In the case of PHA controlled units, the HAP contract will be executed when approved by the HUD Field Office.

**Term of HAP Contract [24 CFR 983.205]:** The Housing Authority may enter into a HAP contract with an owner for an initial term of no less than one year and no more than ten years.

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis, based on funding or other factors at the time of the contract. Within one year before expiration of the HAP contract, LHA may extend the term of the contract for an additional term of up to five years if it is determined that an extension is appropriate to continue providing affordable housing for low-income families. 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.

When determining whether or not to extend an expiring PBV contract, LHA 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)]:** The HAP contract must provide that the term of the Housing Authority’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. 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 Housing Authority 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 LHA. In this case, families living in the contract units must be offered tenant-based assistance.

**Remedies for HQS Violations [24 CFR 983.207(b)]:** LHA 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. If the PHA determines that a contract does not comply with HQS, the Housing Authority 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.

LHA will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

## **17-V-C: AMENDMENTS TO THE HAP CONTRACT**

**Substitution of Contract Units [24 CFR 983.206(a)]:** At LHA’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 building 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 [24 CFR 983.206(b)]:** 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.

The PHA will add units to the contract on a case-by-case basis to ensure the availability of affordable housing as long as the addition of units does not exceed allowable project caps.

**17-V-D: HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.206(c) 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.

**17-V-E: OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.209]**

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;
- ❖ 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; and
- ❖ The family does not own or have any interest in the contract unit.

**17-V-F: ADDITIONAL HAP REQUIREMENTS**

**Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.207(a)]**

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

LHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

LHA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. The PHA will specify any special design standards or additional requirements in the invitation for PBV proposals, the agreement to enter into HAP contract, and the HAP contract.

**Vacancy Payments [24 CFR 983.352(b)]:** At the discretion of the Housing Authority, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the PHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

The Laurinburg Housing Authority will decide on a case-by-case basis if it will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

## **PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS**

### **17-VI-A: 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.

### **17-VI-B: ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]**

LHA 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 re-determined 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]. An applicant family must also meet HUD requirements related to current or past criminal activity.

The PHA will determine an applicant family's eligibility for the PBV program in accordance with the policies in the Section 8 Administrative Plan. **In accordance with the RAD Conversion rule, all tenants in occupancy at conversion who were eligible for Public Housing shall not be re-screened and shall be deemed eligible. Existing tenants are held harmless by the conversion. Applicants for the RAD-PBV units after conversion are subject to all applicable screening as outlined in the Administrative Plan for the Section 8 Program and for all Project Based Assistance programs.**

**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.

#### **17-VI-C: ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]**

The Housing Authority may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-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.

The Laurinburg Housing Authority will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance. LHA currently has waiting lists for the following PBV projects: Scottish Glen (Phase I), Scottish Glen Apartments II (Phase II), Central School Apartments and RAD-PBV Portfolio Conversion of all former Public Housing Units. (See Chapter 18 of this document for specifics about the PBV waiting list.)

A PBV site waiting list is maintained by bedroom size in preference and time and date order for each PBV development. The Section 8 Tenant-Based Administrative Plan establishes the standard for voucher payment standard size as two persons per bedroom. In the PBV units, the voucher is attached to the unit and the waiting list must be maintained by bedroom size. Therefore, the selection of applicants can be based on a range that establishes occupancy standards for under-

and over-housed families. If no applicant is available for a particular unit size that meets the Section 8 Payment Standard the next largest Section 8 eligible family by preference and date and time of application will be approved for the unit. If the Authority has no family available for the PBV unit under contract, the PBV unit will be eligible for vacancy loss as prescribed in the HAP contract. The PBV Properties will maintain a waiting list for transfers of under- and over-housed families. In a Tax Credit Development that does not allow transfers from building to building due to Tax Credit regulations, over- or under-housed households will be considered a preference for movement to another building to correct under- and over-housed situations. These families will receive preference over applicants on the waiting list. To process a move in this restricted situation the family will be moved out of the existing unit and moved into the new unit with a new lease for the new unit. (Note: Building transfer restriction is due to Tax Credit regulations of certain Tax Credit properties.)

**17-VI-D: 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 for the PBV development. Applicants can be on multiple waiting lists. 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. Families referred by the PBV owner must complete the Authority's application and screening process. The owner may screen families for suitability. If a family is rejected by the owner/management of a property, the applicant will be removed from the PBV waiting list for that property but may remain on other waiting lists in other PBV properties and the tenant-based waiting list if the applicant has applied and is on the list. In this case, the applicant will maintain their place on this/these lists.

**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 including the PBV units.

**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)]:** 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.

Although the PHA is prohibited from granting preferences to persons with a specific disability, the PHA may give preference to disabled families who need services offered at a particular project or site if the preference is limited to families (including individuals):

- ❖ With disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;
- ❖ Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and
- ❖ For whom such services cannot be provided in a non-segregated setting.

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 buildings with more than 25 percent of the units receiving project-based assistance because those buildings include “excepted units” (units specifically made available for elderly or disabled families, or families receiving supportive services), the PHA must give preference to such families when referring families to these units [24 CFR 983.261(b)].

LHA will provide a selection preference for PBV units in accordance with the Tenant Selection Plan of the Project-Based development owner/management, provided that the preference does not violate any federal regulation or conflict with a Housing Authority preference. (Example: Preference for single elderly or disabled family over non elderly or non-disabled single applicant.)

The Housing Authority may also Project-Base vouchers to a property that is restricted for a specific group such as elderly or disabled. Any designation must be identified in the PBV application process and be considered in the approval process with HUD.

LHA will not establish any preferences beyond those set by the property or designated in the funding application by HUD or established in the Section 8 Administrative Plan.

#### **17-VI-E: 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 for other waiting lists; or
- ❖ Remove the applicant from the tenant-based voucher waiting list.

**Note:** The applicant may be removed from the specific site waiting list after they have met the standard for number of offers and refusals.

##### **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 if the family has also elected to be on the HCV or other waiting list in addition to the specific PBV development.

##### **Acceptance of Offer [24 CFR 983.252]**

**Family Briefing:** When a family accepts an offer for PBV assistance, the Housing Authority 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, LHA must provide a briefing packet that explains how the Housing Authority determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

**Persons with Disabilities:** If an applicant family's head or spouse is disabled, LHA 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. In addition, the Housing Authority will 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 will 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).

#### **17-VI-F: 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(b)].

**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 Housing Authority from LHA'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 LHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the Housing Authority must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. LHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

The owner must notify LHA in writing (mail, fax, or e-mail) within five (5) business days of learning about any vacancy or expected vacancy. LHA 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, LHA 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.

If any contract units have been vacant for 120 days and the Housing Authority has referred eligible Section 8 applicants as set forth above, LHA 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. LHA will provide the notice to the owner within 10 business days of the 120<sup>th</sup> day of the vacancy. The amendment to the HAP contract will be effective the 1<sup>st</sup> day of the month following the date of the PHA's notice. Please refer to Chapter 18 for guidance on the temporary removal of RAD PBV units from the HAP contract.

## **17-VI-G: TENANT SCREENING [24 CFR 983.255]**

### **LHA Responsibility**

The Laurinburg Housing Authority is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, LHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

LHA will not conduct screening to determine a PBV applicant family's suitability for tenancy. However, the owner may choose to screen families by additional criteria, which may affect lease compliance of the family.

The Housing Authority 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) 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.

LHA 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 inspection or before. LHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc. LHA will share data with the Management Agent of Public Housing units converted under RAD.

### **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.

## **PART VII: OCCUPANCY**

### **17-VII.A. OVERVIEW**

After an applicant has been selected from the waiting list, determined eligible by the Housing Authority, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

### **17-VII.B. LEASE [24 CFR 983.256]**

The tenant must have legal capacity to enter into a lease agreement 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.

LHA may review the owner's lease form to determine if the lease complies with state and local law. If it is determined that the lease does not comply with state or local law, LHA may decline to approve the tenancy.

The Laurinburg Housing Authority 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 of 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 provided 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 LHA (the names of family members and any LHA-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) and 983.257(b)]**

The initial lease term must be for at least one year. Upon expiration of the lease, an owner may renew the lease, refuse to renew the lease for "good cause," or refuse to renew the lease without good cause. If the owner refuses to renew the lease without good cause, the Housing Authority must provide the family with a tenant-based voucher and remove the unit from the PBV HAP contract.

**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 LHA a copy of all changes.

The owner must notify LHA 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 LHA and in accordance with the terms of the lease relating to its amendment. The Housing Authority must determine 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 determined 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.

***Non-Compliance with Supportive Services Requirement [24 CFR 983.257(c)]:*** If a family is living in a project-based unit that is excepted from the 25 percent building cap on project-basing because of participation in a supportive services program (e.g. Family Self-Sufficiency or Supportive Services, and the family fails to complete its supportive services requirement without good cause, such failure may be grounds for termination.

***Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]:*** The owner may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by LHA 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.

**Security Deposits [24 CFR 983.258]:** The owner may collect a security deposit from the tenant. The Housing Authority may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

LHA 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. LHA has no liability or responsibility for payment of any amount owed by the family to the owner.

## **17-VII.C. MOVES**

### **Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.259]**

When 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.

**Accessible Unit Transfer:** LHA will notify the family and the owner of the family's need to move based on the occupancy of an accessible unit within 10 business days of the PHA's determination. Based on the availability of assistance, the PHA will offer the family the following types of continued assistance in the following order:

- ❖ PBV assistance in the same building or project;
- ❖ PBV assistance in another project; and
- ❖ Tenant-based voucher assistance.

**Over or Under Housed Transfer:** Selection of the right sized family for the subsidy standard for referral to the owner of the PBV unit is the responsibility of LHA (**Note:** The rent on a unit in PBV is a contract rent established in the PBV HAP contract and not determined at the time of family leasing.) If the Housing Authority does not have the right size family and selects the next largest family for the available unit, the PHA must provide the owner and family written notice of the wrong size unit at the time of referral. If the family accepts the unit, the family will sign a one-year lease for the PBV unit and the family will not be asked to move during the initial year unless they occupy an accessible unit and a disabled family requires the unit. After the initial year of tenancy, the family will only be required to move if there are families on the waiting list that needs the occupied unit size. A transfer of an over- or under-housed family will not be required if the applicant family is also a wrong size family. Example: If a family is over-housed in a four-bedroom unit and there are no other families requiring a four-bedroom unit on the wait list, then the family will not be asked to move if the unit will once again be filled with a wrong size family. In addition, if two or more units of a particular unit size are vacant and there are not adequate applicants available for the vacant unit, no over-housed family will be required to move if the same size unit will remain vacant after transfer. Example: There are three vacant three-bedroom units and only two eligible three-bedroom families on the wait list. An over-housed family in a three bedroom unit will not be asked to move because the unit is not needed.

When a family is in a wrong size unit and LHA determines the family must move, based on the availability of assistance, LHA will offer the family the following types of continued assistance in the following order:

- ❖ 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 Housing Authority must terminate the PBV housing assistance payment for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by the PHA).

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 Housing Authority must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by LHA.

When LHA 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 period, LHA will terminate the housing assistance payments at the expiration of this 30-day period by giving the appropriate 30-day notice to the landlord and tenant of termination of assistance. The Housing Authority may make exceptions to this 30-day period if needed for documented reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member or financial hardship.

**Family Right to Move [24 CFR 983.260]:** 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 LHA. If the family wishes to move with continued tenant-based assistance, the family must contact LHA to request the rental assistance prior to providing notice to terminate the lease. The family must also be in compliance with their current lease and in good standing with the landlord.

#### **17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.261]**

LHA may not pay housing assistance under a PBV HAP contract for more than 25 percent of the number of dwelling units in a building unless the units are [24 CFR 983.56]:

- ❖ In a single-family building;
- ❖ Specifically made available for elderly or disabled families; or
- ❖ Specifically made available for families receiving supportive services as defined by the PHA. At least one member must be receiving at least one qualifying supportive service.

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) Supportive Services or any other service as defined as defined by the PHA and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

A family (or remaining members of a family) residing in an excepted unit that no longer meets the criteria for a "qualifying family" in connection with the 25 percent per building cap exception (e.g., the family does not successfully complete supportive services requirements, or due to a change in family composition the family is no longer elderly or disabled), may be required to vacate the unit within a reasonable period of time established by the PHA. The housing assistance payments for a family residing in an excepted unit that is not in compliance

with its family obligations to comply with supportive services requirements may be terminated by the PHA.

LHA will provide PBV assistance for excepted units. The owner will be notified if the Housing Authority identifies non-compliant families and give the owner 60 days to terminate the family and begin eviction proceedings. If the owner fails to take action, rental Assistance will be discontinued.

## **PART VIII: DETERMINING RENT TO OWNER**

### **17-VIII.A. 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 into 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 determined at the owner's request in accordance with program requirements, and at such time that there is a ten percent or greater decrease in the published FMR.

### **17-VIII.B. 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. These different limits apply to contract units that meet all of 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 building, 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 a PHA-determined amount (not to exceed 110 percent of the fair market rent or any approved exception payment standard).

For contract units that meet all of criteria reflected above, 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 building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

### **Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]**

When determining the initial rent to owner, the Housing Authority must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When determining the rent to owner, LHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, LHA 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, LHA 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.

Upon written request by the owner, the Housing Authority 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 Housing Authority 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, LHA 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 it is determined that it is necessary due to LHA budgetary constraints.

For LHA controlled units, any request for use of the FMR's or payment standard/utility allowance in place 30 days before the HAP contract will be submitted to the HUD Field Office for review and approval.

### **Redetermination of Rent [24 CFR 983.302]**

The PHA must determine the rent to owner upon the owner's request or when there is a five 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 that have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

An owner's request for a rent increase must be submitted to the Housing Authority 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing. Except for an increase in rents at the beginning of the initial HAP, if the owner requests the use of payment standards in effect 30 days before the HAP when previously approved rents are more than 12 months old. Any increase for PHA controlled units requires Field Office approval. RAD rents for converted Public Housing units will be determined by HUD regulations specific to the RAD PBV program.

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. 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.

#### ***Notice of Rent Change***

The rent to owner is determined by written notice by the PHA to the owner specifying the amount of the determined 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. LHA 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 or the HUD Field Office. LHA must use the rent to owner established by the independent entity as approved by HUD.

#### **17-VIII.C. 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 or independent appraisal for PHA owned units.

#### **When Rent Reasonable Determinations are Required**

The PHA must determine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- ❖ There is a five percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR 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
- ❖ 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, LHA 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 LHA 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 the rent charged by the owner for other comparable unassisted units in the premises. At any time, LHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

### **17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL**

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

### **Other Subsidy [24 CFR 983.304]**

At its discretion, a PHA may reduce the initial rent to owner because of other governmental subsidies, including tax credit or tax exemption, grants, or other subsidized financing. For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- ❖ An insured or non-insured Section 236 project;
- ❖ A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- ❖ A Section 221(d)(3) below market interest rate (BMIR) project;
- ❖ A Section 515 project of the Rural Housing Service;
- ❖ A project receiving low-income housing tax credits;
- ❖ Any other type of federally subsidized project specified by HUD.

#### ***Combining Subsidy***

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

#### **Rent Control [24 CFR 983.305]**

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

### **PART IX: PAYMENTS TO OWNER**

#### **17-IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]**

During the term of the HAP contract, the Housing Authority must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

Except for discretionary vacancy payments, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit). The amount of the housing assistance payment by the PHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

#### **17-IX.B. VACANCY PAYMENTS [24 CFR 983.352]**

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if LHA determines that the vacancy is the owner's fault.

If the Laurinburg Housing Authority determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, the Housing Authority will notify the landlord of the amount of housing assistance payment that the owner must repay. LHA will require the owner to repay the amount owed in accordance with the policies in the Section 8 Administrative Plan.

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner. The PHA may only make vacancy payments if:

- ❖ The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- ❖ The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- ❖ The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- ❖ The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the Housing Authority and must provide any information or substantiation required by LHA to determine the amount of any vacancy payment.

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified the PHA of the vacancy in accordance with the policy in Section 17-VI.F regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications. LHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the PHA within 10 business days of the PHA's request, no vacancy payments will be made. The owner must have completed the requirement to notify the PHA of the vacancy and had valid documented reasons for failure to rent the unit. The PHA will be liable for vacancy payments if the PHA fails to promptly refer eligible Section 8 applicants.

#### **17-IX.C. 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.

However, to encourage an increase in leasing success rate during times when the LHA success rate is below 50%, LHA Board approved payment of security deposits and/or utility deposits on behalf of new tenants entering the program using on-going administrative fee or administrative fee reserves. The amount paid by LHA on behalf of the tenant will be determined based on current market conditions.

### **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.

LHA will make utility reimbursements to the utility company and notify the family of the amount of utility to be paid at each annual and interim re-examination. Payments will be paid each month between the first and third of the month.

**Note:** Because Section 8 funding is a monthly pass through of funds from the Federal Government LHA must receive its monthly allocation of funds to be able to make assistance payments. In the case of a government shutdown and LHA does not receive the Housing Assistance funds from the Federal Government, the Rental Assistance nor Utility Assistance payments will not be made until federal funds are received.

## **17-IX.D. OTHER FEES AND CHARGES [24 CFR 983.354]**

### **Meals and Supportive Services**



With the exception of 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.

**EXHIBIT 17-1: PBV DEVELOPMENT INFORMATION**

(Fill out one for each development)

**Date:** [Enter the date on which this form was completed]

**DEVELOPMENT INFORMATION**

**Development Name:** [Insert name of PBV development]

**Address:** [Insert full address of PBV development]

**Owner Information:** [Insert PBV development owner name and contact information. If development is PHA-owned, enter “PHA-owned.”]

**Property Management Company:** [Insert property management company name and contact information, or enter “None”]

**PHA-Owned:** [Enter “Yes” or “No.” If yes, enter name of independent entity]

**Mixed Finance Development:** [Enter “Yes” or “No.” If yes, list other types of funding and units to which other funding applies.]

**HAP CONTRACT**

**Effective Date of Contract:** [Enter start date of HAP contract]

**HOTMA Requirements:** [If HAP contract was signed prior to April 18, 2017, enter “Pre-HOTMA.” If HAP contract was signed on or after April 18, 2017, enter “Post-HOTMA.”]

**Term of HAP Contract:** [Enter term from HAP contract]

**Expiration Date of Contract:** [Enter expiration date from HAP contract]

**PBV UNITS**

|                              | <b>0 BR</b> | <b>1 BR</b> | <b>2 BR</b> | <b>3 BR</b> | <b>4 BR</b> | <b>5 BR</b> | <b>Total</b> |
|------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| <b># of Units</b>            |             |             |             |             |             |             |              |
| <b>Initial Contract Rent</b> | \$          | \$          | \$          | \$          | \$          | \$          |              |

**Accessible Units and Features:** [Identify which units are accessible and describe accessibility features or enter “None”]

**Target Population:** [Describe targeted population in accordance with HAP contract or enter “None”]

**Excepted Units:** [Identify excepted unit types below or enter “None”]

**Supportive Services:** [Enter “Yes, see Exhibit D of HAP Contract” or enter “No”]

**Elderly Units:** [Enter “Yes” or “No.” If yes, identify which units are elderly units.]

**Disabled Units** (only for HAP contracts executed prior to April 18, 2017) [Enter “Yes” or “No.” If yes, identify which units are for persons with disabilities.]

**Are units excepted because they are located in a low-poverty census tract area?:** [Enter “Yes” or “No”]

### WAITING LIST AND SELECTION

**Waiting List Type:** [ Enter “Site-based waiting list,” “Combined with HCV,” “Waiting list for entire PBV program,” or “Merged with another assisted housing program”]

**Preferences:** [Enter “Same as HCV; see Chapter 4” or describe preferences offered. If different from HCV, also note in Section 17.1.B of this policy.]

**Preference Verification:** [Enter “Same as HCV; see Chapter 7” or describe for each preference listed above. If different from HCV, note in Section 17.1.B of this policy.]

**For the PBV program, is the income limit the same as the HCV program?** (Note: In mixed finance developments, other income limits may also apply.) [Enter “Same as HCV; see Chapter 3” or clearly describe. If different from HCV, note in Section 17.1.B of this policy.]

### OCCUPANCY

**Subsidy Standards:** [Enter “Same as HCV; see Chapter 5” or describe. If different from HCV, note in Section 17.1.B of this policy]

**Utilities:** [Enter in accordance with HAP contract Exhibit C]

**Vacancy Payments:** [Enter in accordance with HAP contract Part 1, e, 2 and Section 17-V.F. within this chapter]

**EXHIBIT 17-2: Special Provisions Applying to TPVs Awarded as Part of a Voluntary Conversion of Public Housing Units in Projects that Include RAD PBV Units**

**[24 CFR Part 972.200; Notice PIH 2019-05; Notice PIH 2019-23]**

Under certain circumstances, HUD allows small PHAs to reposition a public housing project (or portion of a project) by voluntarily converting units to tenant-based housing choice voucher assistance. In order to preserve affordable housing for residents of the project, the PHA is given priority to receive replacement tenant protection vouchers (TPVs). As part of the voluntary conversion, the PHA has the option to continue to operate it as rental housing. If so, the PHA or subsequent owner must allow existing families to remain in their units using the TPV in the form of tenant-based assistance. In this situation, however, the PHA may choose to project-base these TPVs in the former public housing project. Families must still be provided with the option to remain in their unit using tenant-based assistance. In order for the PHA to project-base the assistance and include these units on the PBV HAP contract, the family must voluntarily consent in writing to PBV assistance following the requirements in Appendix A of Notice PIH 2019-05. If the family fails to consent to PBV assistance and chooses to remain using tenant-based assistance, the family’s unit is excluded from the PBV HAP contract until the family moves out or consents to switching to PBV assistance. In general, all applicable program regulations and guidance for the standard PBV program apply to these units.

The PHA may also convert units in the same former public housing project to the PBV program under the rental assistance demonstration (RAD) program. The RAD statute authorizes HUD to waive certain statutory and regulatory provisions governing the standard PBV program and specify alternative requirements. In order to facilitate the uniform treatment of residents and units at the project, Notice PIH 2019-23 extended some of the alternative requirements to non-RAD PBV units in the converted project (i.e., the TPV units in the project). As such, while PBV TPV units in the converted project generally follow the requirements for the standard PBV program listed in this chapter, where HUD has specified alternative requirements for non-RAD PBV units in the project, PBV TPV units will instead follow the requirements outlined in Chapter 18 of this policy for the RAD PBV program.

**RAD Requirements Applicable to Non-RAD units in the Project**

| <b>Alternative Requirement under RAD as Listed in Notice PIH 2019-23</b> | <b>Standard PBV Policy That Does Not Apply</b>  | <b>Applicable Policy in Chapter 18</b> |
|--|---|--|
| 1.6.A.4. Site Selection – Compliance with PBV Goals                      | 17-II.G. SITE SELECTION STANDARDS applies with the exception of deconcentration of poverty and expanding housing and economic opportunity requirements. | 18-II.F. SITE SELECTION STANDARDS      |

|   |   |  |
|---|---|--|
| 1.6.B.5.d. PBV Site-Specific Utility Allowances   | Alternative requirement under RAD. No corresponding policy in Chapter 17.   | 18-VII.C. UTILITY ALLOWANCES                                       |
| 1.6.C.1. No Rescreening of Tenants upon Conversion  | Policies contained in Chapter 3 relating to eligibility do not apply to existing tenants who receive TPVs.                        | 18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION |
| 1.6.C.2. Right to Return  | Alternative requirement under RAD. No corresponding policy in Chapter 17.   | 18-I.D. RELOCATION REQUIREMENTS                                    |
| 1.6.C.3. Phase-in of Tenant Rent Increases  | Alternative requirements under RAD. No corresponding policy in Chapter 17.  | 18-VIII.D. PHASE-IN OF TENANT RENT INCREASES                       |
| 1.6.C.4. Family Self Sufficiency (FSS) and Resident Opportunities and Self-Sufficiency Service Coordinator (ROSS-SC) Programs | Not covered in administrative plan.   | 18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS                  |
| 1.6.C.5. Resident Participation and Funding   | Alternative requirement under RAD. No corresponding policy in Chapter 17.   | 18-VI.D. RESIDENT PARTICIPATION AND FUNDING                        |
| 1.6.C.6. Resident Procedural Rights   | Policies related to hearings in Chapter 16 apply, with added procedural rights and notice requirements as outlined in Chapter 18. | 18-VI.H. RESIDENTS' PROCEDURAL RIGHTS                              |
| 1.6.C.7. Earned Income Disregard (EID)  | Alternative requirements under RAD for in-place residents.<br>New admissions follow policies in Chapter 6.                        | 18-VI.G. EARNED INCOME DISALLOWANCE                                |
| 1.6.C.8. Jobs Plus  | Not covered in administrative plan.   | No corresponding policy.   |
| 1.6.C.9. When Total Tenant  | Alternative requirements  | 18-VI.B. LEASE, Continuation                                       |

|   |  |   |
|---|--|---|
| Payment Exceeds Gross Rent                                    | under RAD for in-place residents.<br>New admissions follow policies in 17-VII.B. LEASE, Continuation of Housing Assistance Payments.                                   | of Housing Assistance Payments                                    |
| 1.6.C.10. Under-Occupied Unit                                 | Alternative requirements under RAD for in-place residents.<br>New admissions follow 17-VII.C. MOVES, Overcrowded, Under-Occupied, and Accessible Units                 | 18-VI.E. MOVES, Overcrowded, Under-Occupied, and Accessible Units |
| 1.6.D.4. Establishment of Waiting List                        | Alternative requirements under RAD for initial establishment of the waiting list.<br>Once waiting list is established, follow 17-VI.D. SELECTION FROM THE WAITING LIST | 18-V.D. ORGANIZATION OF THE WAITING LIST                          |
| 1.6.D.10. Initial Certifications and Tenant Rent Calculations | Alternative requirements under RAD for in-place residents. No corresponding policy in Chapter 17.  | 18-VIII.C. TENANT RENT TO OWNER, Initial Certifications           |

Note, while Notice PIH 2019-05 states that the PHA must screen families for eligibility for a tenant protection voucher and that families must be below the low-income limit (80 percent of AMI), Notice PIH 2019-23 waives these requirements for residents in projects that include RAD PBV units.

## **CHAPTER 18: PROJECT-BASED VOUCHERS (PBV) UNDER THE RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM**

### **INTRODUCTION**

This chapter describes HUD regulations and PHA policies related to the Project-Based Voucher (PBV) program under the Rental Assistance Demonstration (RAD) program in eight parts:

Part I: General Requirements. This part describes general provisions of the PBV program, including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Project Selection. This part describes the cap on assistance at projects receiving PBV assistance, ownership and control, and site selection standards.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution and term of the HAP contract.

Part V: Selection of PBV Program Participants. This part describes the requirements and policies governing how the PHA and the owner will select a family to receive PBV assistance.

Part VI: Occupancy. This part discusses occupancy requirements related to the lease, and describes under what conditions families are allowed or required to move.

Part VII: Determining Contract Rent. This part describes how the initial rent to owner is determined, and how rent will be determined throughout the life of the HAP contract.

Part VIII: Payments to Owner. This part describes the types of payments owners may receive under this program.

### **PART I: GENERAL REQUIREMENTS**

#### **18-I.A. OVERVIEW AND HISTORY OF THE RAD PROGRAM**

The Rental Assistance Demonstration (RAD) program was authorized in 2012 in order to assess the effectiveness of converting public housing, moderate rehabilitation properties, and units under the rent supplement and rental assistance payments programs to long-term, project-based Section 8 rental assistance. The program's four primary objectives are to:

- ❖ Preserve and improve public and other assisted housing.
- ❖ Standardize the administration of the plethora of federally subsidized housing programs and rules. The conversions are intended to promote operating efficiency by using a Section 8 project-based assistance model that has proven successful and effective for over 30 years. In other words, RAD aligns eligible properties more closely with other affordable housing programs.
- ❖ Attract private market capital for property renovations. Through the use of this model, properties may be able to leverage private debt and equity to make capital repairs.
- ❖ Increase tenant mobility opportunities.

Under the first component, a PHA with public housing units may submit an application to HUD to convert some or all of their public housing units to long-term, project-based Section 8 HAP contracts under either:

- ❖ Project-based rental assistance (PBRA) under HUD’s Office of Multifamily Housing Programs.
- ❖ Project-based vouchers (PBVs) under HUD’s Office of Public and Indian Housing (PIH).

This chapter will focus on public housing conversions to the PBV program under RAD. In order to distinguish between requirements for public housing conversion under RAD and PBV units under the standard PBV program, we will refer to the standard PBV program and the RAD PBV program.

### **18-I.B. APPLICABLE REGULATIONS**

Overall, the regulations for both the standard and RAD PBV programs generally follow the regulations for the tenant-based HCV program found at 24 CFR Part 982. However, important parts of the tenant-based regulations do not apply to the project-based program. 24 CFR Part 983 outlines the sections of 24 CFR Part 982 that are not applicable to the project-based program.

For the RAD PBV program, Congress authorized HUD to waive certain statutory and regulatory provisions or establish alternative requirements from the standard PBV program. These provisions are identified in Notice PIH 2012-32, REV-2 (issued June 15, 2015) and Notice PIH 2012-32, REV-3 (issued January 12, 2017). Otherwise, all regulatory and statutory requirements for the standard PBV program in 24 CFR Part 983 and Section 8(o)(13) of the Housing Act of 1937, and all applicable standing and subsequent Office of Public and Indian Housing (PIH) guidance, including related handbooks, apply to RAD PBV. This includes environmental review, Davis-Bacon, and fair housing requirements.

RAD is authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011), as amended by the Consolidated Appropriations Act of 2014 (Public Law 113-76, approved January 17, 2014), and the Consolidated and Further Continuing Appropriations Act of 2015 (Public Law 113-235, approved December 6, 2014), and Division L, Title II, Section 237 of the Consolidated Appropriations Act (Public Law 114-113, enacted December 18, 2015) collectively, the “RAD Statute.”

Requirements specific to the RAD program may be found in the following:

- ❖ Generally, public housing projects converting assistance under RAD are bound by the terms of the notice in effect at the time of closing.
  - Notice PIH 2019-23 was immediately applicable at the time of closing to all projects converting assistance (notwithstanding execution of a commitment for conversion). Notice PIH 2019-23 was published on September 5, 2019.



- Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which are effective after a 30-day comment period.
- Notice PIH 2012-32, REV-3 is applicable to projects converting assistance through RAD, including those where a CHAP has already been issued, upon the expiration of the 30-day comment period after publication of the notice. Notice PIH 2012-32, REV-3 was published January 12, 2017.
  - Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which were effective after a 30-day comment period
- Notice PIH 2012-32, REV-2, RAD – Final Implementation, REV-3 is applicable to projects converting assistance through RAD upon the expiration of the 30-day comment period after publication of the Notice. PIH Notice 2012-32, REV-2 was published June 15, 2015.
  - Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which are effective after a 30-day comment period.
- ❖ RAD Quick Reference Guide for Public Housing Converting to PBV Assistance (10/14)
- ❖ RAD Welcome Guide for New Awardees: RAD 1st Component (3/15)
- ❖ Notice PIH 2016-17, Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions.
  - This Notice applies to all projects that have applied for RAD conversion but have not yet converted as of November 10, 2016.
- ❖ Notice PIH 2014-17, Relocation Requirements under the RAD Program, Public Housing in the First Component.
  - This notice may apply to projects that have converted to RAD prior to November 10, 2016, AND who have requested and received approval from HUD to be governed by this notice. See PIH Notice 2016-17, Section 1, Paragraph 1.3 for applicability

**NOTE: Laurinburg Housing Authority converted to RAD-PBV in December of 2015 and therefore operates under Notice PIH 2012-32 Rev 2. And Notice PIH 2014-17 (Fair Housing).**

This notice may apply to projects that have converted to RAD prior to November 10, 2016, **AND** who have requested and received approval from HUD to be governed by this notice. See PIH Notice 2016-17, Section 1, Paragraph 1.3 for applicability.

**NOTE: The policies in this chapter follow Notice PIH 2016-17. If your project falls under PIH 2014-17, applicable policies may be found in Section 18-I.D.**

❖ RAD FAQs (<http://www.radresource.net/search.cfm>)

In other words, the standard PBV program follows many of the same regulations as the tenant-based HCV program, but not all of them, and the RAD PBV program follows many of the same regulations as the standard PBV program, but not all of them.

MTW agencies are able to apply activities impacting the PBV program that are approved in the MTW Plan to properties converting under RAD, provided they do not conflict with RAD requirements.

### **18-I.C. 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 RAD 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.

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, LHA policies for the tenant-based voucher program contained in this Administrative Plan also apply to the RAD PBV program and its participants. This chapter is intended to address requirements specific to the RAD PBV program only. **(Conversion date of 12/01/2015)**

### **18-I.D. RELOCATION REQUIREMENTS [Notice PIH 2016-17]**

For projects that apply for conversion of assistance under the First Component of RAD and will convert November 10, 2016 or later, the following applies [Notice PIH 2016-17]:

- In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents due to conversion. Temporarily relocated tenants retain the right to return to the project once it has been completed.
- Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. While LHA is not required to have a written relocation plan, HUD strongly encourages all PHAs to prepare one. Appendix I of Notice PIH 2014-17 contains recommended contents for a relocation plan.

- In addition, PHAs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24. The obligation due to relocating residents under RAD are broader than URA relocation assistance and payments.
- Any residents that may need to be relocated temporarily to facilitate rehabilitation or construction will have a right to return to an assisted unit at the development once rehabilitation or construction is completed, provided the resident's household is not under-housed; or b) a unit in the development which provides the same major features as the resident's unit in the development prior to the implementation of the RAD conversion.
- Where the transfer of assistance to a new site is warranted and approved, residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete.
- If the PHA's proposed plans for conversion would preclude a resident from returning to the development, the resident must be given an opportunity to comment and/or object to such plans. PHAs must alter the project plans to accommodate the resident's right to return to the development if the resident would be precluded from returning to the development.
- Examples of project plans that may preclude a resident from returning to the development include, but are not limited to:
  - Changes in the development's bedroom distribution that decrease the size of the units, resulting in the resident being under-housed;
  - The resident cannot be accommodated in the remaining assisted units due to a reduction in the number of assisted units at the development;
  - Income limit eligibility requirements associated with the LIHTC program or another program; and
  - Failure to provide a reasonable accommodation, in violation of applicable law, where reasonable accommodation may include installation of accessibility features that are needed by the resident.
- Residents of a development undergoing conversion that would be precluded from returning to the development may voluntarily accept a PHA or owner's offer to permanently relocate to alternative housing, and thereby waive their right to return to the development after rehabilitation or construction is completed. In this event, the PHA must secure the resident's written consent to a voluntary permanent relocation in lieu of returning to the development. PHAs are prohibited from employing any tactics to pressure residents into relinquishing their right to return or accepting other housing

options. Additionally, a PHA may not terminate a resident's lease if the PHA fails to obtain the resident's consent and the resident seeks to exercise the right to return.

- In the case of multi-phase RAD transactions, the resident has a right to return to the development or to other converted phases of the development that are available for occupancy at the time the resident is eligible to exercise their right of return. Generally, the resident's right to return must be accommodated within the development associated with the resident's original unit, however, the PHA may treat multiple converted developments on the same site as one for purposes of right to return. Should the PHA seek to have the resident exercise the right to return at a future phase, the PHA must secure the resident's consent in writing.
- Alternative housing options may involve a variety of housing options, including but not limited to:
  - Transfers to public housing
  - Admission to other affordable housing properties subject to the applicable program rules
  - Housing choice voucher (HCV) assistance
  - Homeownership programs subject to the applicable program rules
  - Other options identified by the PHA

However, for projects that applied for conversion prior to November 10, 2016, the following applies [Notice PIH 2014-17]:

- In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed.
- Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. While the PHA is not required to have a written relocation plan, HUD strongly encourages PHAs to prepare one. Appendix I of Notice PIH 2014-17 contains recommended contents for a relocation plan.
- In addition, PHAs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24.
- Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to an assisted unit at the development once rehabilitation or construction is completed. Where the transfer of assistance to a new site is warranted and approved, residents of the converting development will have the right to

reside in an assisted unit at the new site once rehabilitation or construction is complete. Residents of a development undergoing conversion of assistance may voluntarily accept a PHA or owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.

### **18-I.E. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8; CFR 5.105; Notice PIH 2016-17]**

RAD conversions are governed by the same civil rights authorities that govern HUD-assisted activities in general. These authorities prohibit discrimination and impose affirmative obligations on HUD program participants. PHAs must comply with all applicable fair housing and civil rights laws, including but not limited to the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, when conducting relocation planning and providing relocation assistance. For example, persons with disabilities returning to the RAD project may not be turned away or placed on a waiting list due to a lack of accessible units. Their need for an accessible unit must be accommodated. See the *RAD Fair Housing, Civil Rights, and Relocation Notice* [Notice PIH 2016-17] for more information.

## **PART II: PBV PROJECT SELECTION**

### **18-II.A. OVERVIEW**

Unlike the standard PBV program where the PHA typically selects the property through an owner proposal selection process, projects selected for assistance under RAD PBV are selected in accordance with the provisions in Notice PIH 2012-32, REV-3. Therefore, 24 CFR 983.51 does not apply since HUD selects RAD properties through a competitive selection process.

### **18-II.B. OWNERSHIP AND CONTROL [Notice PIH 2012-32, REV-2]**

### **18-II.B. OWNERSHIP AND CONTROL [Notice PIH 2019-23]**

For projects governed by Notice PIH 2019-23, the following language applies:

- Under the PBV program, the contract administrator and the owner listed on the contract cannot be the same legal entity (i.e., the PHA cannot execute a contract with itself). To avoid this situation, the PHA may either: 1) Transfer the ownership of the project to a nonprofit affiliate or instrumentality of the PHA (including to a “single-purpose entity” that owns nothing other than the property, which will typically be a requirement of a lender or investor), or 2) The PHA can form a related entity that is responsible for management and leasing and can serve as the owner for purposes of the Section 8 HAP contract; in this scenario, the HAP is then executed between the PHA (as the contract administrator) and the PHA's related entity (as the owner for HAP contract purposes). Note that in the second scenario, both the PHA and the entity serving as the owner for HAP contract purposes will be required to sign the RAD Use Agreement [RAD Resource Desk FAQ 01/24/19].
- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or nonprofit entity. HUD may also allow ownership of the project to be transferred to a tax credit entity controlled by a for-profit entity to facilitate the use of tax credits for the project,

but only if HUD determines that the PHA or a nonprofit entity preserves an interest in the profit. The requirement for a public or nonprofit entity, or preservation of an interest by a PHA or nonprofit in a property owned by a tax credit entity controlled by a for-profit entity, is satisfied if a public or nonprofit entity (or entities), directly or through a wholly owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) demonstrates other ownership and control arrangements approved by HUD.

- Control may be established through the terms of the project owner's governing documents or through a Control Agreement, provided that in either case amendment of the terms of control requires consent from HUD.

For projects subject to the requirements of Notice PIH 2012-32, REV-3, the following language applies:

- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or nonprofit entity. The requirement for a public or nonprofit entity is satisfied if a public or nonprofit entity (or entities), directly or through a wholly owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) other ownership and control arrangements approved by HUD.
- If low-income housing tax credits will be used, HUD may allow ownership of the property to be transferred to a tax credit entity controlled by a for-profit entity if HUD determines that the PHA preserves its interest in the property. Preservation of PHA interest in the property includes but is not limited to the following:
  - The PHA, or an affiliate under its sole control, is the general partner or managing member;
  - The PHA retains fee ownership and leases the real estate to the tax credit entity pursuant to a long-term ground lease;
  - The PHA retains control over leasing the property and determining program eligibility;

- The PHA enters into a control agreement by which the PHA retains consent rights over certain acts of the project owner and retains certain rights over the project;
- Other means that HUD finds acceptable

For projects that converted assistance prior to the implementation of Notice PIH 2012-32, REV-3, the following language applies:

- During both the initial term and renewal terms of the HAP contract, ownership must be either of the following:
  - A public or nonprofit entity that has legal title to the property. The entity must have the legal authority to direct the financial, legal, beneficial, and other interests of the property; or
  - A private entity, if the property has low-income tax credits. The PHA must maintain control via a ground lease.

**18-II.C. PHA-OWNED UNITS [24 CFR 983.59, FR Notice 1/18/17, and Notice PIH 2017-21]**

If the project is PHA-owned, rent-setting and inspection functions set out in 24 CFR 983.59 must be conducted by an independent entity approved by HUD.

The definition of *ownership or control* provided under Notice PIH 2019-23 (listed above) is used specifically to determine whether a PHA retains control over a project for purposes of HUD’s requirement for ownership or control of the covered project under RAD. For purposes of determining whether an independent entity will perform certain functions for the project, the definition of *PHA-owned* under Notice PIH 2017-21 is used. This is the same definition used for standard PBV units. In some cases, a project may meet the RAD definition of *ownership or control* but may not be considered PHA-owned for purposes of requiring an independent entity.

The independent entity that performs the 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.

The PHA may 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 the independent entity, may not charge the family any fee for the services provided by the independent entity.

If units converted to PBV under RAD are PHA-owned housing, the PHA will periodically solicit services from a qualified independent entity. The PHA will get HUD-approval for all independent entities relate to PHA Owned units.

**18-II.D. SUBSIDY LAYERING REQUIREMENTS [Notice PIH 2019-23; Notice PIH 2012-32, REV-3; Notice PIH 2012-32, REV-2]**

For projects governed by Notice PIH 2019-23, the following language applies:

- In the case of a PHA that will no longer have ACC units as a result of the pending or simultaneous closing, or have less than 50 units remaining and have initiated procedures to dispose of their final ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project or projects though the conversion. However, the PHA must estimate and plan for outstanding liabilities and costs and must follow Notice PIH 2016-23 or successor notice regarding the administrative activities required to terminate the ACC if it has no plans to develop additional public housing.
- In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.
- Following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless those funds have been identified in the RCC and converted at closing for Section 8 RAD purposes.

For projects governed by Notice PIH 2012-32, REV-3, the following language applies:

- In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered projects. In order to cover the cost of administrative activities required to terminate the ACC, once it no longer has units under the ACC and has no plans to develop additional public housing, the PHA may:

Designate that a reserve associated with the project be available to fund any public housing closeout costs (such as an operating deficit reserve or a specific PHA closeout reserve). Any funds not needed for public housing closeout costs would remain in such reserve or may be transferred to another reserve associated with the project (such as the replacement reserve). Thereafter, these funds may be used at the project pursuant to the authorized use of the applicable reserve; or

Retain funds under the public housing program for this purpose. However, HUD will recapture any public housing funds that a PHA does not expend for closeout costs.



- In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.
- In addition, following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless such funding has been identified in the approved financing plan and included in the approved “sources and uses” attached to the RCC.

For projects governed by the requirements of Notice PIH 2012-32, REV-2, the following language applies:

- In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered project. HUD will recapture any public housing funds that a PHA has not expended once it no longer has units under ACC. In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.

## **18-II.E. PBV PERCENTAGE LIMITATION AND UNIT CAP [Notice PIH 2019-23]**

### **PBV Percentage Limitation**

Covered projects do not count against the maximum amount of assistance a PHA may utilize for the PBV program, which under the standard PBV program is set at 20 percent of the authorized units allocated to a PHA under the HCV program. To implement this provision, HUD is waiving section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6.

### **Unit Cap Limitation**

When HUD published REV-3 of Notice PIH 2012-32, the cap on the number of assisted units in each project was eliminated. Under the standard PBV program the cap is set at the greater of 25 units or 25 percent of the units in the project. HUD is waiving this requirement, and projects governed by Notice PIH 2019-23 and Notice PIH 2012-32, REV-3 have no cap on the number of units that may receive PBV assistance in a project.

However, for projects that are governed by REV-2 of Notice PIH 2012-32, the cap on the number of PBV units in the project is increased to 50 percent. In these projects, however, provided units met certain exception criteria, the PHA may have converted a larger number of units to RAD PBV. For projects governed by the requirements of Notice PIH 2012-32, REV-2 **only**, the following language applies:

- In general, the PHA may not provide PBV assistance for units in a project if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than 50 percent of the number of dwelling units (assisted or unassisted) in the project. However, PHAs may exceed the 50 percent limitation when units in the project are occupied by elderly and/or disabled families or families that will receive supportive services. These units are known as “excepted units” and do not count toward the project cap.
- For projects governed by the requirements of Notice PIH 2012-32, REV-2 choosing to include excepted units, additional policy decisions may be required.

For projects governed by Notice PIH 2012-32, REV-2, the PHA will not provide RAD PBV assistance for any excepted units.

## **18-II.F. SITE SELECTION STANDARDS [Notice PIH 2012-32, REV-3; Notice PIH 2016-17]**

Site selection requirements set forth in 24 CFR 983.57 apply to RAD PBV, with the exception of 983.57(b)(1) and (c)(2). HUD waives the provisions regarding deconcentrating of poverty and expanding housing and economic opportunity for existing housing sites. HUD will conduct a front-end civil rights review of the PHA’s proposed site in certain circumstances. For RAD PBV conversions that involve new construction located in an area of minority concentration (whether on the existing public housing site or on a new site) HUD will determine whether it meets one of the exceptions that would allow for new construction in an area of minority concentration.

The PHA must ensure that its RAD PBV conversion, including any associated new construction, is consistent with its certification to affirmatively further fair housing and complies with civil rights laws.

### **18-II.G. ENVIRONMENTAL REVIEW [Notice PIH 2019-23; *Environmental Review Requirements for RAD Conversions*, March 2019]**

HUD cannot approve an applicant's financing plan submission unless and until the required environmental review has been completed for the applicant's proposed conversion project and found to meet environmental review requirements. Environmental documents must be submitted no later than the applicant's financing plan. HUD will not issue a RAD Conversion Commitment (RCC) if the project plan does not meet the environmental review requirements described in Attachment 1A of Notice PIH 2019-23. Once an awardee has submitted an application for a specific project, they may not make any choice limiting actions before the completion of the environmental review.

## **PART III: DWELLING UNITS**

### **18-III.A. OVERVIEW**

This part identifies the special housing quality standards that apply to the RAD PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

### **18-III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101]**

The housing quality standards (HQS) for the tenant-based program generally apply to the PBV program. HQS 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); Notice PIH 2019-23]**

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, and 40 CFR 745.227, apply to the PBV program

### **18-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES [Notice PIH 2016-17]**

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)

### **18-III.D. INSPECTING UNITS**

#### **Initial Inspection [RAD Quick Reference Guide; Notice PIH 2019-23]**

Under standard PBV regulations at 24 CFR 983.103(b), a PHA may not enter into a HAP contract until the PHA has determined all units comply with HQS. It is the responsibility of the contract administrator to perform this initial inspection (unless units are PHA-owned). In order to accommodate projects in which repairs are conducted, however, HUD has waived this requirement when units are undergoing rehabilitation. In this case, units must meet HQS by the date indicated in the RAD Conversion Commitment (RCC).

#### **Turnover Inspections [24 CFR 983.103(c), FR Notice 1/18/17, and Notice PIH 2017-20]**

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.

#### **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. Turnover inspections are not counted toward meeting this inspection requirement. 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.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the PHA must re-inspect 100 percent of the contract units in the building.

#### **Alternative Inspections [24 CFR 983.103(g); Notice PIH 2016-05]**

In the case of mixed-finance properties that are subject to alternative inspections, the PHA may rely upon an alternative inspection conducted at least triennially to demonstrate compliance with inspection requirements. The PHA will not rely on alternative inspection standards.

#### **Other Inspections [24 CFR 983.103(e)]**

The PHA must inspect contract units whenever needed to determine that the contract units comply with HQS 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 violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting PHA supervisory quality control HQS 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), Notice PIH 2017-21]**

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 the PHA must make the inspections available 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.

## **PART IV: HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT**

### **18-IV.A. OVERVIEW [RAD PBV Quick Reference Guide 6/20]**

Public housing projects converting under RAD do not employ the PBV Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Instead, following the execution of all requirements contained in the Commitment to Enter into a HAP (CHAP) contract and the RAD Conversion Commitment (RCC), a project is converted immediately to the RAD PBV HAP contract following the closing of any construction financing. Owners of public housing projects converted to PBV assistance via RAD enter into a HAP contract with the PHA that will administer the PBV assistance. Units assisted under a RAD PBV HAP contract must be subject to long-term, renewable use and affordability restrictions

### **18-IV.B. HAP CONTRACT REQUIREMENTS**

#### **Contract Information [RAD PBV Quick Reference Guide 6/20; Notice PIH 2019-23]**

The RAD PBV program uses the PBV HAP contract for new construction or rehabilitated housing (Form HUD-52530A), as modified by the RAD rider (Form HUD-52621). For closings on or after January 1, 2018, HUD incorporated the RAD rider directly into the standard PBV HAP contract. For closing that occurred prior to January 1, 2018, the RAD rider must be attached to the PBV HAP contract.

The distinction between “existing housing” and “rehabilitated and newly constructed housing” is overridden by RAD requirements. The project must also have an initial RAD use agreement. All public housing RAD conversion properties financed with LIHTC are also required to include an LIHTC rider.

#### **Execution and Effective date of the HAP Contract [RADBlast! 7/11/16]**

RAD PBV projects do not employ an Agreement to Enter into a Housing Assistance Payments (AHAP) contract like in the standard PBV program. Rather, when the conditions of the CHAP and the RCC are met and the conversion has closed, the PHA executes the HAP contract. Project owners may select the effective date of the HAP contract as the first day of either of the two months following the completed closing.

### **Term of HAP Contract [Notice PIH 2019-23]**

The initial term of the HAP contract may not be for less than 15 years and may be for a term of up to 20 years upon request of the owner and with approval of the administering voucher agency. Upon expiration of the initial term of the contract, and upon each renewal term of the contract, the owner must accept each offer to renew the contract, for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to PHA and HUD approval, at another site through a future transfer of assistance. Contracts are subject to the terms and conditions applicable at the time of each offer and further subject to the availability of appropriations for each year of each such renewal. To implement this provision, HUD is waiving section 8(o)(13)(F) of The United States Housing Act of 1937, which permits a minimum term of one year, as well as 24 CFR 983.205(a), which governs the contract term.

### **Agreement to Enter into a HAP (AHAP) Contract [Notice PIH 2019-23]**

For public housing conversions to PBV, there will be no agreement to enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the Agreement (AHAP), including regulations under 24 CFR Part 983 Subpart D, are waived. The definitions for proposal selection date, new construction, rehabilitation, and existing housing are not applicable.

### **Mandatory Contract Renewal [Notice PIH 2019-23]**

By statute, upon contract expiration, the agency administering the vouchers will offer, and the PHA will accept, renewal of the contract for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to PHA and HUD approval, at another site through a future transfer of assistance. The contract is subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal. Consequently 24 CFR 983.205(b), governing the PHA discretion to renew the contract, will not apply.

In the event that the HAP contract is removed due to breach, non-compliance or insufficiency of appropriations, for all units previously covered under the HAP contract, new tenants must have incomes at or below 80 percent of the area median income at the time of admission and rents may not exceed 30 percent of 80 percent of median income for an appropriate size unit for the remainder of the term of the RAD use agreement

### **Remedies for HQS 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. If the PHA determines that a contract does not comply with HQS, 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.

LHA will abate and terminate PBV HAP contracts for noncompliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

#### **18-IV.C. AMENDMENTS TO THE HAP CONTRACT**

##### **Floating Units [Notice PIH 2012-32, REV-]**

##### **Floating Units [Notice PIH 2019-23]**

Upon request of the owner to the voucher agency that will administer the project, HUD will permit assistance to float among units within the project that are the same bedroom size. The unit to which assistance is floated must be comparable to the unit being replaced in quality and amenities.

If the PHA chooses to float units, units are not specifically identified on the HAP contract, rather the HAP contract must specify the number and type of units in the property that are RAD PBV units. The property must maintain the same number and type of RAD units from the time of the initial HAP contract execution forward.

LHA does not have any mixed financed RAD PBV developments. All units in the RAD PBV developments are subsidized.

##### **Reduction in HAP Contract Units [Notice PIH 2019-23]**

Project owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the HAP contract.

The PHA may not reduce the number of assisted units without written HUD approval. Any HUD approval of a PHA's request to reduce the number of assisted units under contract is subject to conditions that HUD may impose. MTW agencies may not alter this requirement.

If units are removed from the HAP contract because a new admission's TTP comes to equal or exceed the gross rent for the unit and if the project is fully assisted, the PHA must reinstate the unit after the family has vacated the property. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207, or where the development has "floating" units.

##### **18-IV.D. HAP CONTRACT YEAR AND ANNIVERSARY DATES [24 CFR 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 date for all units under a particular HAP contract.

#### **18-IV.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [24 CFR 983.210]**

When the owner executes the HAP contract, he or she 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;
- ❖ 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 (this does not apply to the family's membership in a cooperative); and
- ❖ Repair work on the project selected as an existing project that is performed after HAP contract 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 if required by the funding source used to finance the activity.

#### **18-IV.F. VACANCY PAYMENTS [24 CFR 983.352(b)]**

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the PHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner, including amounts available from the tenant's security deposit.

The PHA will provide vacancy payments to the owner. The HAP contract with the owner will contain the agreement to pay vacancy claims. Vacancy claims will be processed in accordance with requirements of 24 CFR 983.352(b) for the maximum period of time and amount of vacancy payment.



## **PART V: SELECTION OF PBV PROGRAM PARTICIPANTS**

### **18-V.A. 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.

### **18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION [Notice PIH 2019-23]**

Current households cannot be excluded from occupancy at the covered project based on any rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. Post-conversion, the tenure of all residents of the covered project is protected pursuant to PBV requirements regarding continued occupancy unless explicitly modified by Notice PIH 2019-23 (e.g., rent phase-in provisions). For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR 982.201, concerning eligibility and targeting, will not apply for current households. Once that remaining household moves out, the unit must be leased to an eligible family. Existing residents at the time of conversion may not be rescreened for citizenship status or have their social security numbers re-verified.

Further, so as to facilitate the right to return to the assisted property, this provision must apply to current public housing residents of the converting project that will reside in non-RAD PBV units placed in a project that contain RAD PBV units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR 983 for non-RAD PBV. Any non-RAD PBV units located in the same project are also subject to the right to return.

For the RAD PBV program, *in-place family* means a family who lived in a pre-conversion property at the time assistance was converted from public housing to PBV under RAD.

### **18-V.C. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]**

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.

LHA will determine an applicant family's eligibility for the RAD PBV program in accordance with the policies in Chapter 3. The Property Manager will determine suitability for occupancy.

**18-V.D. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c); Notice PIH 2012-32, REV-3]**

The standard PBV regulations at 24 CFR 983.251 set out program requirements related to establishing and maintaining a voucher-wide, PBV program-wide, or site-based waiting list from which residents will be admitted. These provisions will apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies.

LHA will establish a community-wide waiting list for all units (developments) that are receiving RAD PBV assistance. LHA had a community-wide waiting list for all Public Housing Units before the portfolio conversion to RAD December 1, 2015.

**18-V.E. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]**

After conversion to RAD PBV, applicants who will occupy units with RAD 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.

**Income Targeting [24 CFR 983.251(c)(6); Notice PIH 2012-32, REV-2]**

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. Families in place at the time of the conversion are exempt from income targeting requirements. New admissions follow standard PBV requirements.

**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; Notice PIH 2012-32, REV-2]**

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 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].

The RAD PBV units will provide a preference by bedroom size for elderly disabled and victims of a federally declared natural disaster.

## **18-V.F. 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:

- ❖ Refusing to list the applicant on the waiting list for tenant-based voucher assistance
- ❖ Denying any admission preference for which the applicant qualifies
- ❖ Changing 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
- ❖ Removing 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.

#### ***Persons with Disabilities***

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).

## **18-V.G. 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.

The owner must notify LHA in writing (mail, fax, or e-mail) within five (5) business days of learning about any vacancy or expected vacancy. LHA will make every reasonable effort to refer families to the owner within five (5) business days of receiving such notice from the owner.

**18-V.H. TENANT SCREENING [24 CFR 983.255]****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.

LHA 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(c)].

LHA 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 inspection or before. The PHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc. The owner may screen for suitability related to previous tenancy and criminal history. LHA may respond to a landlord reference request if signed by the previous tenant.

## **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
- ❖ Compliance with other essential conditions of tenancy

## **PART VI: OCCUPANCY**

### **18-VI.A. 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.

### **18-VI.B. LEASE [24 CFR 983.256; Notice PIH 2012-32, REV-3]**

The tenant must have legal capacity to enter into 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.

The tenant and the owner must enter into a written lease agreement that is signed by both parties. The tenancy addendum must include, word-for-word, all provisions required by HUD.

### **Lease Requirements [24 CFR 983.256(c); Notice PIH 2019-23 ]**

The lease for a PBV unit must specify all of 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 provided by the owner;
- ❖ The amount of any charges for food, furniture, or supportive services and
- ❖ For any family admitted following conversion, the lease must specify what will happen if the family elects to remain units unit after increasing its income such that it require zero HAP. Specifically, the lease must make clear how the tenant rent will be calculated, and it must address the transition to a new lease.

The PHA must include resident procedural rights for termination notification and grievance procedures in the owner's lease. These requirements are not part of the regular PBV program but are required under RAD. An example of language that may be included can be found in Attachment-1E of Notice PIH 2012-32, REV-2.

**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).

**RAD-PBV Lease Rider [PIH Notice 2012-31 Rev. 2]**

Converting public housing units must maintain the procedural rights to notice and grievance hearing as required in the public housing program. 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); RAD PBV Quick Reference Guide 6/20/14]**

Leases for residents who will remain in place (i.e., who will not be relocated solely as a result of conversion) must have an effective date that coincides with—and must be signed on or before—the effective date of the RAD PBV HAP contract.

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 determine 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 determined 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; Notice PIH 2012-32, REV-2]**

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.

Projects converting from public housing to PBV under RAD have additional procedural rights that do not apply to the standard PBV program. These procedural rights must be included in the owner’s lease as well as the PHA’s Administrative Plan. In addition to the regulations at 24 CFR 983.257 related to project owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease which may not be less than:

- ❖ A reasonable period of time, but not to exceed 30 days:
  - If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
  - In the event of any drug-related or violent criminal activity or any felony conviction
- ❖ 14 days in the case of nonpayment of rent
- ❖ 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

Unlike the standard PBV program, residents in converted projects have the right to request an informal hearing for issues that adversely affect the resident’s rights, obligations, welfare, or status with both the PHA and the project owner. See Chapter 16 Part III: Informal Reviews and Hearings for more information.

### ***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 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

### **Continuation of Housing Assistance Payments [24 CFR 983.258; Notice PIH 2012-32, REV-2]**

Current residents living in the property prior to conversion are placed on and remain under the HAP contract when TTP equals or exceeds gross rent. In this case, until such time as the family’s TTP falls below the gross rent, the family will pay the owner the lesser of their TTP minus the utility allowance or any applicable maximum rent under the LIHTC program. The family will continue to pay this amount until/if circumstances change and HAP is paid on their behalf. In other words, assistance may subsequently be reinstated if the tenant becomes eligible for assistance. In such cases, the resident is still considered a program participant. All of the

family obligations and protections under RAD and standard PBV apply to the resident. Likewise, all requirements with respect to the unit, such as compliance with the HQS requirements, apply as long as the unit is under HAP contract.

Following conversion, 24 CFR 983.53(d) applies, and any new families referred to the RAD PBV project must be initially eligible for a HAP payment at admission to the program. Further, for any new families admitted after the conversion, assistance will be terminated 180 days after the last housing assistance payment on their behalf. The cessation of housing assistance payments does not affect the family's other rights under its lease, nor does it preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within the 180 day window. If a family's assistance is terminated as a result of their zero HAP status, the PHA must remove the unit from the HAP contract. If the project is fully assisted, the PHA must reinstate the unit after the family has vacated the property. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207.

If a participating family who was admitted after the RAD conversion receives zero assistance and subsequently experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify LHA of the change and request an interim reexamination before the expiration of the 180-day period following the change.

#### **Security Deposits [24 CFR 983.259; PBV Quick Reference Guide (10/14)]**

Owners are permitted to collect security deposit amounts that have been previously provided by tenants who are in-place at the time of the RAD conversion. Otherwise, the security deposit requirements for standard PBV apply.

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

LHA 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.

#### **18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS [Notice PIH 2012-32, REV 2]**



Current PH FSS participants will continue to be eligible for FSS once their housing is converted under RAD. A PHA must convert the PH FSS program participants at the covered project to their HCV FSS program. **The Laurinburg Housing Authority had no Public Housing Family Self Sufficiency or public housing ROSS grant for public housing prior to conversion.** Therefore there will be no carry over to the RAD PBV Program. The RAD PBV program will operate supportive services and to the extent there are open slots in the Section 8 FSS Program, RAD-PBV tenants may voluntarily participate in the Section 8 FSS Program.

**18-VI.D. RESIDENT PARTICIPATION AND FUNDING [Notice PIH 2012-32, REV-2]**  
Residents of covered projects converting assistance to PBV will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.

#### **18-VI.E. MOVES**

##### **Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260; Notice PIH 2012-32, REV-2]**

All in-place tenants at the time of conversion are eligible to remain in the project. Over-housed families should be moved into appropriately sized units if such units are available in the converted units. If appropriately sized units are not available, the existing tenants may continue to be over-housed until an appropriately sized unit becomes available or until the tenant leaves the project. Once the unit turns over, it must be leased to an appropriately sized family, provided the appropriate size family is on the waiting list. If no appropriate sized family is on the waiting list the PHA will select the largest family from the waiting list based on preferences, date and time. When the family accepts the unit, they will be required to acknowledge that they will need to move to an appropriate size unit at a future date when an appropriate unit is available.

Following conversion, the standard PBV regulations apply. If the PHA determines that a family is occupying a wrong-size unit, based on the PHA's Occupancy 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.

LHA 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 its determination. LHA 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
- ❖ 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-size 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-size 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.

**The Laurinburg Housing Authority has no other assistance outside the Section 8 Tenant-Based Voucher and the Project-Based Voucher Program to offer a tenant in a wrong size unit; therefore, the agency will not offer this type assistance.**

**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.

**Choice Mobility [Notice PIH 2012-32, REV-2]**

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 lease 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 a voucher or other comparable tenant-based assistance is not immediately available, 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.

Prior to providing notice to the owner to terminate the lease, the family may submit a written request to LHA for a choice mobility voucher at any time after completing the 12-month occupancy requirement.

The family will remain eligible to request a choice mobility voucher as long as they continue living at the same covered project. If a family moves from one covered project to another covered project prior to completing their 12-month occupancy requirement, their 12-month clock will reset. The family must wait 12 months from the date of move-in at the new property before they may request another choice mobility voucher. If a family transfers to a different unit within the same covered project, the 12-month clock does not reset.

The PHA will maintain a combined, agency-wide waiting list for all standard PBV and RAD PBV families wishing to exercise mobility after one year of tenancy. This list will be maintained separately from the tenant-based HCV list. Families on the choice mobility waiting list will be given priority over families on the tenant-based waiting list. The choice mobility waiting list will be organized by date and time of the family's written request to exercise choice mobility. The list

will also identify whether families live in standard PBV or RAD PBV units. Mobility vouchers receive priority over applicants on the Section 8 tenant based waiting list.

Participants in the PBV Program may also be on the Section 8 Tenant-Based waiting list at any time during their tenancy. If a participant receives a mobility voucher while on the Section 8 Tenant-Based wait list, their name will be removed from the tenant based list since they will have received a tenant-based voucher.

***Note: Receipt of mobility (tenant-based voucher) is not automatic. The participants on the mobility waiting list will not be issued a voucher until a voucher is available in the Tenant-Based Voucher Program. Multiple factors can affect the number of vouchers available to participants on waiting list.***

Notice must be provided to the landlord when a tenant-based voucher has been issued. LHA must insure that the subsidy has been terminated for the tenant in the RAD PBV program prior to entering into the new assistance contract under the Section 8 Tenant-Based Voucher Program. Once a tenant has converted to the Section 8 Tenant-Based Voucher Program, all rules governing the operation of that program will apply. The tenant family is no longer subject to any PBV rules.

### **Turnover Cap**

If as a result of RAD, the total number of PBV units (including RAD PBV units) administered by the PHA exceeds 20 percent of the PHA's authorized units under its HCV ACC with HUD, the PHA may establish a turnover cap. The PHA is not required to provide more than three-quarters of its turnover vouchers in any single year to the residents of covered projects. If the PHA chooses to establish a turnover cap and the cap is implemented, the PHA must create and maintain a waiting list in the order requests from eligible households were received.

As a result of RAD, the total number of PBV units (including RAD PBV units) administered by the PHA exceeds 20 percent of the PHA's authorized units under its HCV ACC with HUD. Therefore, the PHA will establish a choice mobility cap. The PHA will not provide more than three-quarters of its turnover vouchers in a single year to residents of RAD PBV developments.

Families who requested a choice mobility voucher and are denied due to the cap will be given priority the following year when choice mobility vouchers are again issued since the choice mobility list will be organized by the date and time of the family's request.

### **Emergency Transfers under VAWA [Notice PIH 2017-08]**

HUD requires that the PHA include policies that address when a victim of domestic violence, dating violence, sexual assault, or stalking 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.

LHA will first offer an internal transfer within the RAD PBV developments for a documented victim of domestic violence, dating violence sexual assault or staling (VAWA). If an internal

transfer is not feasible LHA will offer a tenant-based voucher provided the participant is mobility eligible.

If a PBV family terminates the lease in accordance with LHA requirements due to violence listed under VAWA, at any time after the first year of occupancy, LHA will offer the family the opportunity for continued tenant-based assistance, in the form of a voucher (the PHA has no other tenant based assistance) [24 CFR 983.261]. If a voucher is not immediately available, the family will be given the next available voucher for tenant-based assistance.

If the family has lived in the unit for less than a year, LHA is not required to provide the family with any form of continued assistance.

#### **18-VI.F. REEXAMINATIONS [PBV Quick Reference Guide (10/14)]**

A family living in a unit converted from public housing to RAD PBV may retain its certification date. Unless a family's annual reexamination is due at the same time as the effective date of the RAD PBV HAP contract, the PHA does not need to recertify tenants at the point of conversion. For each family residing in a unit undergoing conversion of assistance under RAD, the administering PHA will have to submit a form HUD-50058 reflecting the family's admission to the voucher program. The effective date of the new admission will be the same as the effective date of the RAD PBV HAP contract. The form should include the same information previously found on the public housing form 50058, including the next annual reexamination date.

#### **18-VI.G. EARNED INCOME DISALLOWANCE [Notice PIH 2012-32, REV-3]**

Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID after conversion, in accordance with regulations at 24 CFR 5.617. Upon the expiration of the EID for such families, the rent adjustment will not be subject to rent phase-in; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time.

Under the HCV program, the EID exclusion is limited to only persons with disabilities [24 CFR 5.617(b)]. In order to allow all tenants (including non-disabled persons) who are employed and currently receiving the EID at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in section 5.617(b) limiting EID to only persons with disabilities is waived. The waiver and resulting alternative requirement only applies to tenants receiving the EID at the time of conversion. No other tenant, such as tenants who at one time received the EID but are not receiving the EID exclusion at the time of conversion (e.g., due to loss of employment), tenants that move into the property following conversion, etc., is covered by this waiver.

#### **18-VI.H. RESIDENTS' PROCEDURAL RIGHTS [Notice PIH 2012-32, REV-2]**

HUD is incorporating additional termination notification requirements for public housing projects that convert assistance under RAD to PBV beyond those for the standard PBV program. In addition to the regulations at 24 CFR 983.257 related to owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV require that PHAs provide adequate written notice of termination of the lease, which is no less than:

- ❖ A reasonable period of time, but not to exceed 30 days:
  - If the health or safety of other tenants, project owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
  - In the event of any drug-related or violent criminal activity or any felony conviction.
- ❖ Not less than 14 days in the case of nonpayment of rent
- ❖ Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

### **18-VI.I. INFORMAL REVIEWS AND HEARINGS [Notice PIH 2012-32, REV-2]**

Unlike the standard PBV program, residents in converted projects have the right to request an informal hearing for issues that adversely affect the resident's rights, obligations, welfare, or status with both the PHA and the project owner. In addition to reasons for an informal hearing listed at 24 CFR 982.555(a)(1)(i)–(vi) (See 16-III.C. Informal Hearings for Participants), an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to an owner action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status. For any hearing required under 24 CFR 982.555(a)(1)(i)–(vi), the contract administrator will perform the hearing, as is the current standard in the program. For any additional hearings required under RAD, the PHA (as owner) will perform the hearing.

An informal hearing will not be required for class grievances or for disputes between residents not involving the PHA (as owner) or contract administrator. This hearing requirement does not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the PHA (as owner) or contract administrator.

The PHA (as owner) must give residents notice of their ability to request an informal hearing as outlined in 24 CFR 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR 982.555(a)(1)(i)–(vi). (See Chapter 16)

The PHA (as owner) must provide an opportunity for an informal hearing before an eviction.

## **PART VII: DETERMINING CONTRACT RENT**

### **18-VII.A. INITIAL CONTRACT RENTS [Notice PIH 2012-32, REV-3]**

RAD conversions are intended to be cost-neutral, and therefore, should not exceed current public housing funding as adjusted for unit size. Since public housing units do not currently have contract rents, HUD provides an estimate of current contract rents for each PHA's public housing units based on current funding as adjusted by bedroom size. Current funding includes operating subsidy, tenant rents, capital funds, replacement housing factor funds (RHF), and demolition disposition transitional funding (DDTF). The funding may limit the amount of initial rent for a property. A detailed explanation of the determination of current funding may be found in Attachment 1C of Notice PIH 2012-32, REV-2. Once the current funding amount is calculated, the amount is adjusted by bedroom size to determine the current funding rent. HUD

uses the same bedroom adjustment factors as in the metropolitan FMR schedules where the project is located.

PHAs may adjust subsidy (and contract rents) across multiple projects as long as the PHA does not exceed the aggregate subsidy for all of the projects the PHA has submitted for conversion under RAD. This use, which HUD refers to as “bundled” rents, is permissible when a PHA submits applications for two or more projects. There is no limit to the number of projects that a PHA may bundle. Notwithstanding the current funding level, the initial rents are set at the lower of:

- ❖ 10 percent of the fair market rent (FMR) or the PHA’s exception payment standard approved by HUD, or the alternate rent cap in a PHA’s MTW agreement
- ❖ Reasonable rent in comparison to the unassisted housing market
- ❖ An amount determined by current funding
  - Adjusted through rent bundling or reconfiguration of units

#### **18-VII.B. ADJUSTING CONTRACT RENTS [Notice PIH 2012-32, REV-3; PBV Quick Reference Guide (10/14)]**

Contract rents will be adjusted annually by HUD’s operating cost adjustment factor (OCAF) at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term. As such, Section 8(o)(13)(I) of the 1937 Act, and 24 CFR 983.301 and 983.302, concerning rent determinations, do not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in the private market, as determined by the contract administrator in accordance with 24 CFR 983.303.

Contract rents may not exceed the reasonable rent, with the exception that the contract rent for each unit may not be reduced below the initial contract rent under the initial HAP contract. However, the rent to owner may fall below the initial contract rent in the following situations:

- ❖ To correct errors in calculations in accordance with HUD requirements
- ❖ If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 983.55 (prohibition of excess public assistance)
- ❖ If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant

The contract rent adjustment will be the lesser of:

- ❖ The current contract rent increased by the operating cost adjustment factor (OCAF), which is published annually in the *Federal Register*; or
- ❖ The reasonable rent.

The administering PHA (or independent entity, if the project is PHA-owned) is responsible for processing rent adjustments, at each contract anniversary date, in accordance with the prevailing OCAF. The PHA who administers the contract (directly or via an independent entity) must maintain records to demonstrate how OCAF amounts were determined and how rent adjustments were calculated. HUD approval of rent adjustments is not required.

Properties are eligible to receive prior years' OCAF adjustments for years in which the OCAF was not taken. The OCAF must be applied retroactively if it was missed. The PHA administering the contract (or the independent entity) must make sure that all OCAF's have been applied correctly since the RAD closing and calculate the current rents accordingly, including making sure that the RAD PBV contract rents do not exceed the PBV program caps.

### **Rent Decrease**

Rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

### **18-VII.C. UTILITY ALLOWANCES [Notice PIH 2012-32, REV-3; PBV Quick Reference Guide (10/14)]**

When contract rent amounts are set initially, the amount does not include a utility allowance. In general, the utility allowances that are used on the initial HAP contract at closing are the public housing utility allowances that are in effect prior to conversion. The CHAP must be updated prior to conversion to reflect current public housing utility allowances. At its discretion, a PHA may use the FMRs and utility allowances in effect during the 30-day period immediately before the beginning date of the HAP contract. A PHA may request a waiver from HUD in order to establish a site-specific utility allowance schedule.

After conversion, unless a waiver is requested and approved by HUD, the PHA must maintain a utility allowance schedule for tenant-paid utilities in accordance with standard PBV and HCV utility allowance regulations at 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517 respectively. These utility allowances are effective for in-place families at recertification.

The PHA will use the HCV utility allowance schedule for the RAD developments.

### **18-VII.D. 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 rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

### **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.

## **PART VIII: PAYMENTS TO OWNER**

### **18-VIII.A. HOUSING ASSISTANCE PAYMENTS**

During the term of the HAP contract, the PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

Except for discretionary vacancy payments, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by the PHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

### **18-VIII.B. VACANCY PAYMENTS [24 CFR 983.352]**

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

If the PHA determines that the owner is responsible for a vacancy and as a result is not entitled to keep the housing assistance payment, the PHA will notify the landlord of the amount of housing assistance payment that the owner must repay. The PHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner. The PHA may only make vacancy payments if:



- ❖ The owner gives the PHA prompt(5 days of the known vacancy), written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner’s knowledge);
- ❖ The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- ❖ The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- ❖ The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

If an owner’s HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified the PHA of the vacancy in accordance with the policy in Section 18-V.G regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the PHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the PHA within 10 business days of the PHA’s request, no vacancy payments will be made.

**18-VIII.C. 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.

LHA will make utility reimbursements to the company supplying electricity to the unit. The Authority will provide the family with a utility allowance computation at each annual re-examination.

### **18-VIII.D. PHASE-IN OF TENANT RENT INCREASES [Notice PIH 2012-32, REV-2]**

For in-place tenants, if a tenant's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over three years. To implement this provision, HUD is waiving section 3(a)(1) of the 1937 Act, as well as 24 CFR 983.3 (definition of *total tenant payment (TTP)*) only to the extent necessary to allow for the phase-in of tenant rent increases. For families who were on EID at the time of conversion to RAD PBV, upon the expiration of the EID, the rent adjustment is not subject to rent phase-in.

### **(Note: RAD Conversion was December 1, 2015. The three year phase in ended on December 1, 2018)**

LHA will implement a three-year phase-in for in-place families whose rent increases by more than the greatest of 10 percent or \$25 as a result of the conversion as follows:

- ❖ Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion: 33 percent of the difference between the most recently paid TTP and the calculated PBV TTP
- ❖ Year 2: Year 2 annual recertification (AR) and any interim recertification (IR): 50 percent of the difference between the most recently paid TTP and the calculated PBV TTP
- ❖ Year 3: Year 3 AR and all subsequent recertifications: Full calculated TTP.

Once the standard TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward. Tenants moving in after conversion, that have an income increase during tenancy, will pay the TTP as rent, which may exceed the contract rent.

### **18.VIII.E. OTHER FEES AND CHARGES [24 CFR 983.354]**

#### **Meals and Supportive Services**

With the exception of 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.

## **Chapter 19**

### **SPECIAL PURPOSE VOUCHERS**

#### **INTRODUCTION**

Special purpose vouchers are specifically funded by Congress in separate appropriations from regular HCV program funding in order to target specific populations. Special purpose vouchers include vouchers for the following programs:

- Family Unification Program (FUP)
- Foster Youth to Independence (FYI) program
- Veterans Affairs Supportive Housing (VASH)
- Mainstream
- Non-Elderly Disabled (NED)

LHA does not currently administer any of the above special purpose vouchers:

## GLOSSARY

### **A. ACRONYMS USED IN THE HOUSING CHOICE VOUCHER (HCV) PROGRAM**

|                 |   |
|-----------------|---|
| <b>AAF</b>      | Annual adjustment factor (published by HUD in the <i>Federal Register</i> and used to compute annual rent adjustments)          |
| <b>ACC</b>      | Annual contributions contract   |
| <b>ADA</b>      | Americans with Disabilities Act of 1990   |
| <b>AIDS</b>     | Acquired immune deficiency syndrome   |
| <b>BR</b>       | Bedroom   |
| <b>CDBG</b>     | Community Development Block Grant (Program)   |
| <b>CFR</b>      | Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”) |
| <b>CPI</b>      | Consumer price index (published monthly by the Department of Labor as an inflation indicator)                                   |
| <b>EID</b>      | Earned income disallowance  |
| <b>EIV</b>      | Enterprise Income Verification  |
| <b>FDIC</b>     | Federal Deposit Insurance Corporation   |
| <b>FHA</b>      | Federal Housing Administration (HUD Office of Housing)  |
| <b>FHEO</b>     | Fair Housing and Equal Opportunity (HUD Office of)  |
| <b>FICA</b>     | Federal Insurance Contributions Act (established Social Security taxes)   |
| <b>FMR</b>      | Fair market rent  |
| <b>FR</b>       | Federal Register  |
| <b>FSS</b>      | Family Self-Sufficiency (Program)   |
| <b>FY</b>       | Fiscal year   |
| <b>FYE</b>      | Fiscal year end   |
| <b>GAO</b>      | Government Accountability Office  |
| <b>GR</b>       | Gross rent  |
| <b>HA</b>       | Housing authority or housing agency   |
| <b>HAP</b>      | Housing assistance payment  |
| <b>HCV</b>      | Housing choice voucher  |
| <b>HQS</b>      | Housing quality standards   |
| <b>HUD</b>      | Department of Housing and Urban Development   |
| <b>HUDCLIPS</b> | HUD Client Information and Policy System  |

|              |   |
|--------------|---|
| <b>IPA</b>   | Independent public accountant   |
| <b>IRA</b>   | Individual retirement account   |
| <b>IRS</b>   | Internal Revenue Service  |
| <b>IVT</b>   | Income Validation Tool  |
| <b>JTPA</b>  | Job Training Partnership Act  |
| <b>LBP</b>   | Lead-based paint  |
| <b>LEP</b>   | Limited English proficiency   |
| <b>MSA</b>   | Metropolitan statistical area (established by the U.S. Census Bureau)   |
| <b>MTCS</b>  | Multi-family Tenant Characteristics System (now the Form HUD-50058 submodule of the PIC system)                             |
| <b>MTW</b>   | Moving to Work  |
| <b>NOFA</b>  | Notice of funding availability  |
| <b>OGC</b>   | HUD's Office of General Counsel   |
| <b>OIG</b>   | HUD's Office of Inspector General   |
| <b>OMB</b>   | Office of Management and Budget   |
| <b>PASS</b>  | Plan to Achieve Self-Support  |
| <b>PHA</b>   | Public housing agency   |
| <b>PIC</b>   | PIH Information Center  |
| <b>PIH</b>   | (HUD Office of) Public and Indian Housing   |
| <b>PS</b>    | Payment standard  |
| <b>QC</b>    | Quality control   |
| <b>REAC</b>  | (HUD) Real Estate Assessment Center   |
| <b>RFP</b>   | Request for proposals   |
| <b>RFTA</b>  | Request for tenancy approval  |
| <b>RIGI</b>  | Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level) |
| <b>SEMAP</b> | Section 8 Management Assessment Program   |
| <b>SRO</b>   | Single room occupancy   |
| <b>SSA</b>   | Social Security Administration  |
| <b>SSI</b>   | Supplemental security income  |
| <b>SWICA</b> | State wage information collection agency  |

|             |  |
|-------------|--|
| <b>TANF</b> | Temporary assistance for needy families            |
| <b>TPV</b>  | Tenant protection vouchers                         |
| <b>TR</b>   | Tenant rent  |
| <b>TTP</b>  | Total tenant payment                               |
| <b>UA</b>   | Utility allowance                                  |
| <b>UFAS</b> | Uniform Federal Accessibility Standards            |
| <b>UIV</b>  | Upfront income verification                        |
| <b>URP</b>  | Utility reimbursement payment                      |
| <b>VAWA</b> | Violence Against Women Reauthorization Act of 2013 |

## **B. 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.

**Child care 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 their education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

**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 within its jurisdiction to promote self-sufficiency among participating families, including the coordination of supportive services to these families (24 CFR 984.103).

**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 child care 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 their representative, or the managing agent or their 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. (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, that 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 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, that 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 age 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.)

**Small rural public housing agency (PHA).** Section 38 defines the term “small public housing agency” as a public housing agency “for which the sum of the number of public housing dwelling units administered by the agency and the number of vouchers under section 8(o) administered by the agency is 550 or fewer” and “that predominantly operates in a rural area, as described in section 1026.35(b)(2)(iv)(A) of title 12, Code of Federal Regulations.” After consideration of the public comments discussed above, HUD is interpreting “predominantly operates in a rural area” to mean a small PHA that:

- (1) Has a primary administrative building with a physical address in a rural area as described in 12 CFR 1026.35(b)(2)(iv)(A); or
- (2) more than 50 percent of its combined public housing units and voucher units under section 8(o) are in rural areas as described in 12 CFR 1026.35(b)(2)(iv)(A). HUD also clarifies that voucher units under section 8(o) include those in the tenant-based Housing Choice Voucher (HCV) program and the Project-Based Voucher (PBV) program.

**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, child care or other services for working families. For the FSS program (24 CFR 984.103), *welfare assistance* includes only cash maintenance payments designed to meet a family's ongoing basic needs. Does not include nonrecurring short term benefits designed to address individual crisis situations, work subsidies, supportive services such as child care and transportation provided to families who are employed, refundable earned income tax credits, contributions to and distributions from Individual Development Accounts under TANF, services such as counseling, case management, peer support, child care information and referral, financial empowerment, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support, amounts solely directed to meeting housing expenses, amounts for health care, Supplemental Nutrition Assistance Program (SNAP) and emergency rental and utilities assistance, SSI, SSDI, or social security, and child-only or non-needy TANF grants made to or on behalf of a dependent child solely on the basis of the child's need and not the need of the child's current non-parental caretaker.

