PUBLIC HOUSING

ADMISSIONS AND CONTINUED OCCUPANCY POLICY

(ACOP)

2021

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ADMISSIONS AND CONTINUED OCCUPANCY POLICY

FOR THE

PUBLIC HOUSING PROGRAM

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Chapter 1

OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

The MHA receives its operating subsidy for the public housing program from the Department of Housing and Urban Development. The MHA is not a federal department or agency. A public housing agency (MHA) 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 MHA enters into an Annual Contributions Contract with HUD to administer the public housing program. The MHA must ensure compliance with federal laws, regulations and notices and must establish policies and procedures to clarify federal requirements and to ensure consistency in program operation.

This chapter contains information about the MHA and its programs with emphasis on the public housing 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 (MHA). This part includes a description of the MHA, its jurisdiction, its programs, and its mission and intent.
>
> Part II: The Public Housing Program. This part contains information about public housing operation, roles and responsibilities, and partnerships.
>
> Part III: The Admissions and Continued Occupancy (ACOP). This part discusses the purpose and organization of the plan and its revision requirements.

PART I: THE MHA

1-I.A. OVERVIEW

This part describes the MHA's creation and authorization, the general structure of the organization, and the relationship between the MHA Board and staff.

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1-I.B. ORGANIZATION AND STRUCTURE OF THE MHA

Public housing is funded by the federal government and administered by the **Montgomery Housing Authority** for the jurisdiction of **[Insert jurisdiction name: City of Montgomery, Alabama / County of Montgomery, Alabama]**.

MHAs are governed by a board of officials that are generally called "commissioners." Although some MHAs may use a different title for their officials, this document will hitherto refer to the "board of commissioners" or the "board" when discussing the board of governing officials.

Commissioners are appointed in accordance with state housing law and generally serve in the same capacity as the directors of a corporation. The board of commissioners establishes policies under which the MHA conducts business and ensures that those policies are followed by MHA staff. The board is responsible for preserving and expanding the agency's resources and assuring the agency's continued viability and success.

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

The principal staff member of the MHA is the executive director (ED), who is selected and hired by the board. The ED oversees the day to day operations of the MHA and is directly responsible for carrying out the policies established by the commissioners. The ED's duties include hiring, training, and supervising the MHA's staff, as well as budgeting and financial planning for the agency. Additionally, the ED is charged with ensuring compliance with federal and state laws, and program mandates. In some MHAs, the ED is known by another title, such as chief executive officer or president.

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1-I.C. MHA MISSION

The purpose of a mission statement is to communicate the purpose of the agency to people inside and outside of the agency. It provides the basis for strategy development, identification of critical success factors, resource allocation decisions, as well as ensuring client and stakeholder satisfaction.

MHA Mission Statement

To create affordable, sustainable housing while including the quality of life for families and encouraging independence.

MHA Vision Statement

Provide a strong foundation for families by becoming the preferred leader of affordable housing in the city of Montgomery.

Core Values

Integrity, Trust, Leadership, Progress and Customer Service

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1-I.D. THE MHA'S COMMITMENT TO ETHICS AND SERVICE

As a public service agency, the MHA is committed to providing excellent service to all public housing applicants, residents, and the public. In order to provide superior service, the MHA resolves to:

- Administer applicable federal and state laws and regulations to achieve high ratings in compliance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing in good repair – in compliance with program uniform physical condition standards – for very low- and low-income families.
- Achieve a healthy mix of incomes in its public housing developments by attracting and retaining higher income families and by working toward deconcentration of poverty goals.
- Encourage self-sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational and other human services needs.
- Promote fair housing and the opportunity for very low- and low-income families of all races, ethnicities, national origins, religions, ethnic backgrounds, and with all types of disabilities, to participate in the public housing program and its services.
- Create positive public awareness and expand the level of family and community support in accomplishing the MHA'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 MHA's support systems and commitment to our employees and their development.

The MHA will make every effort to keep residents informed of program rules and regulations, and to advise participants of how the program rules affect them.

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PART II: THE PUBLIC HOUSING PROGRAM

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

The intent of this section is to provide the public and staff an overview of the history and operation of public housing.

The United States Housing Act of 1937 (the "Act") is responsible for the birth of federal housing program initiatives, known as public housing. The Act was intended to provide financial assistance to states and cities for public works projects, slum clearance and the development of affordable housing for low-income residents. There have been many changes to the program since its inception in 1937.

The Housing Act of 1965 established the availability of federal assistance, administered through local public agencies, to provide rehabilitation grants for home repairs and rehabilitation. This act also created the federal Department of Housing and Urban Development (HUD).

The Housing Act of 1969 created an operating subsidy for the public housing program for the first time. Until that time, public housing was a self-sustaining program.

In 1998, the Quality Housing and Work Responsibility Act (QHWRA) – also known as the Public Housing Reform Act or Housing Act of 1998 – was signed into law. Its purpose was to provide more private sector management guidelines to the public housing program and provide residents with greater choices. It also allowed MHAs more remedies to replace or revitalize severely distressed public housing developments. Highlights of the Reform Act include: the establishment of flat rents; the requirement for MHAs to develop five-year and annual plans; income targeting, a requirement that 40% of all new admissions in public housing during any given fiscal year be reserved for extremely low-income families; and resident self-sufficiency incentives.

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1-II.B. PUBLIC HOUSING PROGRAM BASICS

HUD writes and publishes regulations in order to implement public housing laws enacted by Congress. HUD contracts with the MHA to administer programs in accordance with HUD regulations and provides an operating subsidy to the MHA. The MHA must create written policies that are consistent with HUD regulations. Among these policies is the MHA's Admissions and Continued Occupancy Policy (ACOP). The ACOP must be approved by the board of commissioners of the MHA.

The job of the MHA pursuant to HUD regulations is to provide decent, safe, and sanitary housing, in good repair, to low-income families at an affordable rent. The MHA screens applicants for public housing and, if they are determined to be eligible for the program, the MHA makes an offer of a housing unit. If the applicant accepts the offer, the MHA and the applicant will enter into a written lease agreement. At this point, the applicant becomes a tenant in the public housing program.

In the context of the public housing program, a tenant is defined as the adult person(s) (other than a live-in aide who (1) executed the lease with the MHA as lessee of the dwelling unit, or, if no such person now resides in the unit, (2) who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit. [24 CFR 966.53]. The Public Housing Occupancy Guidebook refers to tenants as "residents." The terms "tenant" and "resident" are used interchangeably in this policy. Additionally, this policy uses the term "family" or "families" for residents or applicants, depending on context.

Since the MHA owns the public housing development, the MHA is the landlord. The MHA must comply with all of the legal and management responsibilities of a landlord in addition to administering the program in accordance with HUD regulations and MHA policy.

1-II.C. PUBLIC HOUSING PARTNERSHIPS

To administer the public housing program, the MHA must enter into an Annual Contributions Contract (ACC) with HUD. The MHA also enters into a contractual relationship with the tenant through the public housing lease. These contracts define and describe the roles and responsibilities of each party.

In addition to the ACC, the MHA and family must also comply with federal regulations and other HUD publications and directives. For the program to work and be successful, all parties involved – HUD, the MHA, and the tenant – play an important role.

The chart on the following page illustrates key aspects of these relationships.

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The Public Housing Relationships

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What does HUD do?

Federal law is the source of HUD responsibilities. HUD has the following major responsibilities:

- Develop regulations, requirements, handbooks, notices and other guidance to implement housing legislation passed by Congress
- Allocate operating subsidies to MHAs
- Allocate capital funding to MHAs
- Provide technical assistance to MHAs on interpreting and applying program requirements
- Monitor MHA compliance with program requirements and MHA performance in program administration.

What does the MHA do?

The MHA's responsibilities originate in federal regulations and the ACC. The MHA owns and manages public housing developments, administers the program under contract with HUD and has the following major responsibilities:

- Ensure compliance with all non-discrimination, equal opportunity, and fair housing laws, and ensure that the program is accessible to persons with disabilities
- Establish local policies and procedures for operating the program
- Accept applications from interested applicant families and determine whether they are income eligible for the program
- Maintain waiting list and select families for admission
- Screen applicant families for suitability as renters
- Maintain housing units by making any necessary repairs in a timely manner
- Make unit offers to families (minimize vacancies without overcrowding)
- Maintain properties to the standard of decent, safe, sanitary, and in good repair (including assuring compliance with uniform physical conditions standards)
- Make sure the MHA has adequate financial resources to maintain its housing stock
- Perform regular reexaminations of family income and composition in accordance with HUD requirements
- Collect rent due from the assisted family and comply with and enforce provisions of the lease
- Ensure that families comply with program rules
- Provide families with prompt and professional service
- Comply with HUD regulations and requirements, the Annual Contributions Contract, HUD-approved applications for funding, the MHA's ACOP, and other applicable federal, state and local laws.

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What does the tenant do?

The tenant's responsibilities are articulated in the public housing lease. The tenant has the following broad responsibilities:

- Comply with the terms of the lease and MHA house rules, as applicable
- Provide the MHA with complete and accurate information, determined by the MHA to be necessary for administration of the program
- Cooperate in attending all appointments scheduled by the MHA
- Allow the MHA to inspect the unit at reasonable times and after reasonable notice
- Take responsibility for care of the housing unit, including any violations of uniform physical condition standards caused by the family
- Not engage in drug-related or violent criminal activity
- Notify the MHA before moving or termination of the lease
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit or assign the lease
- Promptly notify the MHA of any changes in family composition
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs
- Take care of the housing unit and report maintenance problems to the MHA promptly

If all parties fulfill their obligations in a professional and timely manner, the program responsibilities will be fulfilled in an effective manner.

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1-II.D. APPLICABLE REGULATIONS

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 35: Lead-Based Paint
- 24 CFR Part 902: Public Housing Assessment System
- 24 CFR Part 903: Public Housing Agency Plans
- 24 CFR Part 945: Designated Housing
- 24 CFR Part 960: Admission and Occupancy Policies
- 24 CFR Part 965: MHA-Owned or Leased Projects – General Provisions
- 24 CFR Part 966: Lease and Grievance Procedures

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PART III: THE ADMISSIONS AND CONTINUED OCCUPANCY POLICIES

1-III.A. OVERVIEW AND PURPOSE OF THE POLICY

The ACOP is the MHA's written statement of policies used to carry out the housing program in accordance with federal law and regulations, and HUD requirements. The ACOP is required by HUD and it must be available for public review [CFR 24 Part 903]. The ACOP also contains policies that support the objectives contained in the MHA's Agency Plan.

All issues related to public housing not addressed in this ACOP are governed by federal regulations, HUD handbooks and guidebooks, notices and applicable state and local laws. The policies in this ACOP have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding. The MHA is responsible for complying with all changes in HUD regulations pertaining to public housing. If such changes conflict with this plan, HUD regulations will have precedence.

1-III.B. CONTENTS OF THE POLICY

Unlike the housing choice voucher program, HUD regulations for public housing do not contain a list of what must be included in the ACOP. However, individual regulations contain requirements of inclusion in the MHA's written policy. At a minimum, the ACOP plan should cover MHA policies on these subjects:

- The organization of the waiting list and how families are selected and offered available units, including any MHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the MHA waiting list (Chapters 4 and 5)
- Transfer policies and the circumstances under which a transfer would take precedence over an admission (Chapter 12)
- Standards for determining eligibility, suitability for tenancy, and the size and type of the unit needed (Chapters 3 and 5)
- Procedures for verifying the information the family has provided (Chapter 7)
- The method for achieving deconcentration of poverty and income-mixing of public housing developments (Chapter 4)
- Grievance procedures (Chapter 14)
- Policies concerning payment by a family to the MHA of amounts the family owes the MHA (Chapter 15 and 16)
- Interim redeterminations of family income and composition (Chapter 9)
- Policies regarding community service requirements; (Chapter 11)
- Polices and rules about safety and ownership of pets in public housing (Chapter 10).

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New Approach to Policy Development

HUD has developed an approach to monitoring MHAs that emphasizes the importance of consistency in operation and decision-making. The ACOP supports that goal by clearly setting forth the MHA's operating policies.

A primary focus of HUD's Rental Integrity Monitoring (RIM) program has been consistency in how MHAs conduct their business and in how HUD monitors MHA activities. Referring to and following the ACOP is essential to maintaining consistency in applying MHA policy.

HUD makes a distinction between mandatory policies and non-mandatory policies:

- Mandatory policies: those driven by legislation, regulations, current handbooks, current PIH notices, and legal opinions from the Office of General Counsel
- Optional, non-binding guidance: includes guidebooks, FAQs, PIH notices that have expired, and recommendations from individual HUD staff.

HUD expects MHAs to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies the MHA has adopted. The ACOP is comprised of mandatory policies and optional MHA policy. HUD's new direction emphasizes the need for a clearly written and comprehensive ACOP to guide staff in the clear and consistent application of policy.

HUD suggestions, recommendations, written issuances, and guidance are consistent with mandatory federal policy. Therefore, using HUD guidance in the preparation of MHA policy, even though it is not mandatory, provides a MHA with a "safe harbor." If a MHA adopts its own optional policy, it must make its own determination that such policy 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 that suggested by HUD, but MHAs should carefully think through those decisions and be able to articulate how their policy is consistent with federal laws, regulations and mandatory policy.

1-III.C. UPDATING AND REVISING THE POLICY

The MHA will revise this ACOP as needed to comply with changes in HUD regulations. The original policy and any changes must be approved by the board of commissioners of the MHA, the pertinent sections included in the Agency Plan, and a copy provided to HUD.

MHA Policy

The MHA will review and update the ACOP as needed to reflect changes in regulations, MHA operations, or when needed to ensure staff consistency in operation.

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Chapter 2

FAIR HOUSING AND EQUAL OPPORTUNITY

INTRODUCTION

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

This chapter describes HUD regulations and MHA policies related to these topics in three parts:

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

Part II: Policies Related to Persons with Disabilities. This part discusses the rules and policies of the public housing 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 MHA to ensure meaningful access to the public housing 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.*

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PART I: NONDISCRIMINATION

2-I.A. OVERVIEW

Federal laws require MHAs to treat all applicants and tenant families equally, providing the same quality of service, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. The MHA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the *Federal Register* February 3, 2012 and further clarified in Notice PIH 2014-20
- The Violence against Women Act of 2013 (VAWA)
- Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

When more than one civil rights law applies to a situation, the laws will be read and applied together.

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2-I.B. NONDISCRIMINATION

Federal regulations prohibit discrimination against certain protected classes and other groups of people. State and local requirements, as well as MHA policies, can prohibit discrimination against additional classes of people.

The MHA shall not discriminate because of race, color, sex, religion, familial status, age, disability or national origin (called "protected classes").

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.

The MHA will not discriminate on the basis of marital status, gender identity, or sexual orientation [FR Notice 02/03/12].

MHA Policy

The MHA does not identify any additional protected classes.

The MHA 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 public housing 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 tenant 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
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class

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Providing Information to Families

The MHA must take steps to ensure that families are fully aware of all applicable civil rights laws. As part of the public housing orientation process, the MHA will provide information to public housing applicant families about civil rights requirements.

Discrimination Complaints

If an applicant or tenant family believes that any family member has been discriminated against by the MHA, the family should advise the MHA. The MHA should make every reasonable attempt to determine whether the applicant or tenant family's assertions have merit and take any warranted corrective action.

In all cases, the MHA may advise the family to file a fair housing complaint if the family feels they have been discriminated against under the Fair Housing Act.

Upon receipt of a housing discrimination complaint, the MHA is required to:

- Provide written notice of the complaint to those alleged and inform the complainant that such notice was made
- Investigate the allegations and provide the complainant and those alleged with findings and either a proposed corrective action or an explanation of why corrective action is not warranted
- Keep records of all complaints, investigations, notices, and corrective actions [Notice PIH 2014-20]

<u>MHA Policy</u>

Applicants or tenant families who believe that they have been subject to unlawful discrimination may notify the MHA either orally or in writing.

Within 10 business days of receiving the complaint, the MHA will provide a written notice to those alleged to have violated the rule. The MHA will also send a written notice to the complainant informing them that notice was sent to those alleged to have violated the rule, as well as information on how to complete and submit a housing discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

The MHA will attempt to remedy discrimination complaints made against the MHA and will conduct an investigation into all allegations of discrimination.

Within 10 business days following the conclusion of the MHA's investigation, the MHA 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.

The MHA will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter 16.)

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PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES

2-II.A. OVERVIEW

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

The MHA must ensure that persons with disabilities have full access to the MHA's programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the public housing program [24 CFR 8].

The MHA must provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy [24 CFR 966.7(b)].

MHA Policy

The MHA will ask all applicants and resident families if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by the MHA, 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 housing authority."

A specific position and phone number will be provided as the contact person for requests for accommodation for persons with disabilities.

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2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

A “reasonable accommodation” is a change, exception, or adjustment to a policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since policies and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]

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

Types of Reasonable Accommodations

When it is reasonable (see definition above and Section 2-II.E), the MHA shall accommodate the needs of a person with disabilities. Examples include but are not limited to:

- Permitting applications and reexaminations to be completed by mail
- Providing “large-print” forms
- Conducting home visits
- Permitting a higher utility allowance for the unit if a person with disabilities requires the use of specialized equipment related to the disability
- Modifying or altering a unit or physical system if such a modification or alteration is necessary to provide equal access to a person with a disability
- Installing a ramp into a dwelling or building
- Installing grab bars in a bathroom
- Installing visual fire alarms for hearing impaired persons
- Allowing a MHA-approved live-in aide to reside in the unit if that person is determined to be essential to the care of a person with disabilities, is not obligated for the support of the person with disabilities and would not be otherwise living in the unit.
- Providing a designated handicapped-accessible parking space
- Allowing an assistance animal
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with MHA staff
- Displaying posters and other housing information in locations throughout the MHA's office in such a manner as to be easily readable from a wheelchair

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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, HUD requires that the MHA 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 Accommodations under the Fair Housing Act].

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

If the need for the accommodation is not readily apparent or known to the MHA, the family must explain the relationship between the requested accommodation and the disability.

MHA Policy

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

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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 MHA 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 MHA's programs and services.

If a person's disability is obvious or otherwise known to the MHA, 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 MHA, the MHA 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 MHA 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 (Program Administration). 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 MHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The MHA may 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 MHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the MHA will dispose of it. In place of the information, the MHA 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].

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2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act, Notice PIH 2010-26]

The MHA must approve a request for an accommodation if the following three conditions are met.

- The request was made by or on behalf of a person with a disability.
- There is a disability-related need for the accommodation.
- The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on the MHA, or fundamentally alter the nature of the MHA's operations.

Requests for accommodations must be assessed on a case-by-case basis. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the overall size of the MHA's program with respect to the number of employees, type of facilities and size of budget, type of operation including composition and structure of workforce, the nature and cost of the requested accommodation, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

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

MHA Policy

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

If the MHA denies a 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 the right to appeal the MHA's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).

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

If the MHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, the MHA 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. The notice will inform the family of the right to appeal the MHA's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).

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

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

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

MHA Policy

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. When visual aids are used in public meetings or presentations, or in meetings with MHA staff, one-on-one assistance will be provided upon request.

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

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2-II.G. PHYSICAL ACCESSIBILITY

The MHA 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 MHA's policies concerning physical accessibility must be readily available to applicants and resident families. They can be found in three key documents.

- This policy, the Admissions and Continued Occupancy Policy, describes the key policies that govern the MHA'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 MHA Plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of MHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Notice PIH 2010-26 contains specific information on calculating the percentages of units for meeting UFAS requirements.

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 public housing program.

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2-II.H. DENIAL OR TERMINATION OF ASSISTANCE

A MHA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 966.7].

When applicants with disabilities are denied assistance, the notice of denial must inform them of their right to request an informal hearing [24 CFR 960.208(a)].

When a family's lease is terminated, the notice of termination must inform the family of their right to request a hearing in accordance with the MHA's grievance process [24 CFR 966.4(l)(3)(ii)].

When reviewing reasonable accommodation requests, the MHA must consider whether reasonable accommodation will allow the family to overcome the problem that led to the MHA's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, the MHA must make the accommodation [24 CFR 966.7].

In addition, the MHA must provide reasonable accommodation for persons with disabilities to participate in the hearing process [24 CFR 966.56(h)].

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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 public housing 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.*

The MHA 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 persons are 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 Admissions and Continued Occupancy Policy, LEP persons are public housing applicants and resident families, and parents and family members of applicants and resident families.

In order to determine the level of access needed by LEP persons, the MHA 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 public housing program; (2) the frequency with which LEP persons come into contact with 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 MHA and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the MHA.

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2-III.B. ORAL INTERPRETATION

The MHA will offer competent interpretation services free of charge, upon request, to the LEP person.

MHA Policy

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

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 MHA. The interpreter may be a family member or friend.

The MHA 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 language assistance plan (LAP), the MHA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other MHAs, 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.

MHA Policy

In order to comply with written-translation obligations, the MHA will take the following steps:

The MHA 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 MHA may not translate vital written materials, but will provide 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.

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2-III.D. IMPLEMENTATION PLAN

After completing the four-factor analysis and deciding what language assistance services are appropriate, the MHA shall determine whether it is necessary to develop a written implementation plan to address the identified needs of the LEP populations it serves.

If the MHA determines that it is not necessary to develop a written implementation plan, the absence of a written plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to the MHA's public housing program and services.

MHA Policy

If it is determined that the MHA serves very few LEP persons, and the MHA has very limited resources, the MHA will not develop a written LEP plan, but will consider alternative ways to articulate in a reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants will be contacted for input into the process.

If the MHA determines it is appropriate to develop a written LEP plan, the following five steps will be taken: (1) Identifying LEP individuals who need language assistance; (2) identifying language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the LEP plan.

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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 live 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 MHA) 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.

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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 public housing 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 definition of 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 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 public housing program, yet an accommodation is needed to provide equal opportunity.

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Chapter 3

ELIGIBILITY

INTRODUCTION

The MHA is responsible for ensuring that every individual and family admitted to the public housing 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 MHA to confirm eligibility and determine the level of the family's assistance.

To be eligible for the public housing program:

- The applicant family must:
  - Qualify as a family as defined by HUD and the MHA.
  - 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 MHA's collection and use of family information as provided for in MHA-provided consent forms.
- The MHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the MHA.

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and MHA 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 Admission. This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause the MHA to deny admission.

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PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

3-I.A. OVERVIEW

Some eligibility criteria and program rules vary depending upon the composition of the family requesting assistance. In addition, some requirements apply to the family as a whole and others apply to individual persons who will live in the public housing unit. This part provides information that is needed to correctly identify family and household members and explains HUD's eligibility rules.

3-I.B. FAMILY AND HOUSEHOLD [24 CFR 5.105(a)(2), 24 CFR 5.403, FR Notice 02/03/12, and Notice PIH 2014-20]

The terms *family* and *household* have different meanings in the public housing program.

Family

To be eligible for admission, an applicant must qualify as a family. *Family* as defined by HUD, includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, disabled person, near-elderly person, or any other single person; or a group of persons residing together. Such group includes, but is not limited to a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family), an elderly family, a near-elderly family, a disabled family, a displaced family, or the remaining member of a tenant family. The MHA has the discretion to determine if any other group of persons qualifies as a family.

Gender Identity means actual or perceived gender characteristics.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

> MHA Policy
>
> A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law, but who either can demonstrate that they have lived together previously or certify that each individual's income and other resources will be available to meet the needs of the family.
>
> Each family must identify the individuals to be included in the family at the time of application and must update this information if the family's composition changes.

Household

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

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

Family Breakup

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

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the MHA 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-VII.D of this plan.)
- If a court determines the disposition of property between members of the assisted family, the MHA is bound by the court's determination of which family members continue to receive assistance.

MHA Policy

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 submit a new application with a new application date if the waiting list is open.

If a family breaks up into two otherwise eligible families while living in public housing, only one of the new families will retain occupancy of the unit.

If a court determines the disposition of property between members of an applicant or resident family, the MHA will abide by the court's determination.

In the absence of a judicial decision or an agreement among the original family members, the MHA will determine which family will retain their placement on the waiting list or continue in occupancy. In making its determination, the MHA will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, including a family member who was forced to leave a public housing unit as a result of such actual or threatened abuse, and provides documentation in accordance with section 16-VII.D of this ACOP; (4) any possible risks to family members as a result of criminal activity, and (5) the recommendations of social service professionals.

Remaining Member of a Tenant Family [24 CFR 5.403]

The HUD definition of family includes the *remaining member of a tenant family,* which is a member of a resident family who remains in the unit when other members of the family have left the unit [PH Occ GB, p. 26]. Household members such as live-in aides, foster children, and foster adults do not qualify as remaining members of a family.

If dependents are the only "remaining members of a tenant family" and there is no family member able to assume the responsibilities of the head of household, see Chapter 6, Section 6-I.B, for the policy on "Caretakers for a Child."

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

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

MHA Policy

The family may designate any qualified family member as the head of household.

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

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

A family may have a spouse or cohead, but not both [HUD-50058 IB, p. 13].

Spouse means the marriage partner of the head of household.

MHA Policy

A *marriage partner* includes the partner in a "common law" marriage as defined in state law. The term “spouse” does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.

A *cohead* is an individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, but who is not a spouse. A family can have only one cohead.

MHA Policy

Minors who are emancipated under state law may be designated as a cohead.

Other adult means a family member, other than the head, spouse, or cohead, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults [HUD-50058 IB, p. 14].

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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, cohead, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a deduction from annual income as described in Chapter 6.

Joint Custody of Dependents

MHA Policy

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

When more than one applicant or assisted family (regardless of program) are 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 MHA will make the determination based on available documents such as court orders, an IRS income tax return showing which family has claimed the child for income tax purposes, school records, or other credible documentation.

3-I.G. FULL-TIME STUDENT [24 CFR 5.603]

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

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

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3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY [24 CFR 5.100, 5.403, 945.105, and FR Notice 02/03/12]

Elderly Persons

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

Near-Elderly Persons

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

Elderly Family

An *elderly family* is one in which the head, spouse, cohead, or sole member is an elderly person. Identifying elderly families is important because these families qualify for the elderly family allowance and the medical allowance as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403, FR Notice 02/03/12]

Persons with Disabilities

Under the public housing 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 MHA must make all aspects of the public housing program accessible to persons with disabilities and consider requests for reasonable accommodations when a person's disability limits their full access to the unit, the program, or the MHA's services.

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 and the medical allowance as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent the MHA from denying admission or taking action under the lease for reasons related to alcohol and drug abuse in accordance with the policies found in Part III of this chapter and in Chapter 13.

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

A *guest* is defined as a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

The lease must provide that the tenant has the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests [24 CFR 966.4(d)]. The head of household is responsible for the conduct of visitors and guests, inside the unit as well as anywhere on or near MHA premises [24 CFR 966.4(f)].

MHA Policy

A resident family must notify the MHA when overnight guests will be staying in the unit for more than 3 days. A guest can remain in the unit no longer than 14 consecutive days or a total of 30 cumulative calendar days during any 12 month period.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure expected to last 20 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.

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 public housing unit more than 50 percent of the time, are not subject to the time limitations of guests as described above.

Former residents who have been evicted are not permitted as overnight guests.

Guests who represent the public housing unit address as their residence address or address of record for receipt of benefits or any other purposes will be considered unauthorized occupants. In addition, guests who remain in the unit beyond the allowable time limit will be considered to be unauthorized occupants, and their presence constitutes violation of the lease.

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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(c)(2)].

The term *foster child* is not specifically defined by the regulations.

Foster children and foster adults that are living with an applicant or resident 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, pp. 13-14].

> MHA Policy
>
> A 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.

Children that are temporarily absent from the home as a result of placement in foster care are discussed in Section 3-I.L.

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3-I.L. ABSENT FAMILY MEMBERS

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

Definitions of Temporarily and Permanently Absent

MHA Policy

Generally an individual who is or is expected to be absent from the public housing 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 public housing 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

MHA Policy

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 MHA 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 as a result of placement in foster care are considered members of the family.

MHA Policy

If a child has been placed in foster care, the MHA 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.

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Absent Head, Spouse, or Cohead

MHA Policy

An employed head, spouse, or cohead absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

Individuals Confined for Medical Reasons

MHA Policy

An individual confined to a nursing home or hospital on a permanent basis is not considered a family member.

If there is a question about the status of a family member, the MHA 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.

Return of Permanently Absent Family Members

MHA Policy

The family must request MHA approval for the return of any adult family members that the MHA has determined to be permanently absent. The individual is subject to the eligibility and screening requirements discussed in this chapter.

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3-I.M. LIVE-IN AIDE

Live-in aide means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the person(s), (2) is not obligated for the support of the person(s), and (3) would not be living in the unit except to provide the necessary supportive services [24 CFR 5.403].

The MHA must approve a live-in aide if needed as a reasonable accommodation for a person with disabilities in accordance with 24 CFR 8.

A live-in aide is considered a household member but not a family member. The income of the live-in aide is not counted in determining the annual income of the family [24 CFR 5.609(c)(5)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. However, a relative who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family.

MHA Policy

A family's request for a live-in aide may be made either orally or in writing. The MHA will verify the need for a live-in aide, if necessary, with a reliable, knowledgeable professional as provided by the family, such as a doctor, social worker, or case worker. For continued approval, the family may be required to submit a new, written request—subject to MHA verification—at each annual reexamination.

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

The MHA has the discretion not to approve a particular person as a live-in aide, and may withdraw such approval, if [24 CFR 966.4(d)(3)(i)]:

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

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

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PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

HUD is required by law to establish income limits that determine the income eligibility of applicants for HUD's assisted housing programs, including the public housing program. The income limits are published annually and are based on HUD estimates of the median incomes for families of different sizes in a particular area or county.

Types of Low-Income Families [24 CFR 5.603(b)]

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

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

Extremely low-income family. A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

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

HUD also publishes over-income limits annually, but these are not used at admission. Over-income limits will be discussed in Chapter 13.

Using Income Limits for Eligibility [24 CFR 960.201]

Income limits are used to determine eligibility at admission. Eligibility is established by comparing a family's annual income with HUD's published income limits. To be income-eligible, a family must be a *low-income* family.

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Using Income Limits for Targeting [24 CFR 960.202(b)]

At least 40 percent of the families admitted from the MHA waiting list to the public housing program during a MHA fiscal year must be *extremely low-income* families. This is called the "basic targeting requirement."

If admissions of extremely low-income families to the MHA's housing choice voucher program during a MHA fiscal year exceed the 75 percent minimum targeting requirement for that program, such excess shall be credited against the MHA's public housing basic targeting requirement for the same fiscal year.

The fiscal year credit for housing choice voucher program admissions that exceed the minimum voucher program targeting requirement must not exceed the lower of:

- Ten percent of public housing waiting list admissions during the MHA fiscal year
- Ten percent of waiting list admission to the MHA's housing choice voucher program during the MHA fiscal year
- The number of qualifying low-income families who commence occupancy during the fiscal year of public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low-income family means a low-income family other than an extremely low-income family.

For discussion of how income targeting is used in tenant selection, see Chapter 4.

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

Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or noncitizens that have eligible immigration status. At least one family member must be a citizen, national, or 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 MHA'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]

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

U.S. Citizens and Nationals

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

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

Eligible Noncitizens

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with MHA 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].

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Ineligible Noncitizens

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The MHA 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

A family is eligible for admission as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be prorated, and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 14 for a discussion of grievance hearing procedures.

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

A MHA 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 MHA that the individual or at least one family member is eligible [24 CFR 5.512(a)].

> MHA Policy
>
> The MHA will not provide assistance to a family before the verification of at least one family member as a citizen, national, or eligible noncitizen.
>
> When a MHA 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 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 grievance hearing with the MHA. The grievance hearing with the MHA 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 grievance hearing process.
>
> Grievance hearing procedures are contained in Chapter 14.

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Time Frame for Determination of Citizenship Status [24 CFR 5.508(g)]

For new occupants joining the resident family the MHA 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 MHA 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.

MHA Policy

The MHA will verify the status of applicants at the time other eligibility factors are determined.

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, Notice PIH 2018-24]

The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation necessary to verify each SSN. If a child under age six has been added to an applicant family within the six months prior to program admission, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN within 90 days of admission. A detailed discussion of acceptable documentation is provided in Chapter 7.

Note: These requirements do not apply to noncitizens who do not contend eligible immigration status.

In addition, each participant who has not previously disclosed an SSN, has previously disclosed an SSN that HUD or the SSA determined was invalid, or has been issued a new SSN must submit their complete and accurate SSN and the documentation required to verify the SSN at the time of the next interim or annual reexamination or recertification. Participants age 62 or older as of January 31, 2010, whose determination of eligibility was begun before January 31, 2010, are exempt from this requirement and remain exempt even if they move to a new assisted unit.

The MHA must deny assistance to an applicant family if they do not meet the SSN disclosure and documentation requirements contained in 24 CFR 5.216.

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3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.230]

HUD requires each adult family member, and the head of household, spouse, or cohead, regardless of age, to sign form HUD-9886, Authorization for the Release of Information Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

The MHA must deny admission to the program if any member of the applicant family fails to sign and submit consent forms which allow the MHA to obtain information that the MHA has determined is necessary in administration of the public housing program [24 CFR 960.259(a) and (b)].

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PART III: DENIAL OF ADMISSION

3-III.A. OVERVIEW

A family that does not meet the eligibility criteria discussed in Parts I and II must be denied admission.

In addition, HUD requires or permits the MHA to deny admission based on certain types of current or past behaviors of family members as discussed in this part. The MHA's authority in this area is limited by the Violence against Women Act of 2013 (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis or as a direct result of the fact that the applicant is or has been the victim of domestic violence, dating violence, sexual assault, or stalking [24 CFR 5.2005(b)].

This part covers the following topics:

- Required denial of admission
- Other permitted reasons for denial of admission
- Screening
- Criteria for deciding to deny admission
- Prohibition against denial of admission to victims of domestic violence, dating violence, sexual assault, or stalking
- Notice of eligibility or denial

3-III.B. REQUIRED DENIAL OF ADMISSION [24 CFR 960.204]

MHAs are required to establish standards that prohibit admission of an applicant to the public housing program if they have engaged in certain criminal activity or if the MHA has reasonable cause to believe that a 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.

Where the statute requires that the MHA prohibit admission for a prescribed period of time after some disqualifying behavior or event, the MHA may choose to continue that prohibition for a longer period of time [24 CFR 960.203(c)(3)(ii)].

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

- Any member of the household has been evicted from federally-assisted housing in the last three years for drug-related criminal activity. HUD permits but does not require the MHA to admit an otherwise-eligible family if the household member has completed a MHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g. the person involved in the criminal activity no longer lives in the household).

  MHA Policy

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

- The MHA determines that any household member is currently engaged in the use of illegal drugs. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]. *Currently engaged in the illegal use of a drug* means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)].

  MHA Policy

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

- The MHA 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.

  MHA Policy

  In determining reasonable cause, the MHA 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. 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. The MHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

- 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.

- Any household member is subject to a lifetime registration requirement under a state lifetime sex offender registration program.

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3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION

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

Criminal Activity [24 CFR 960.203(c)]

The MHA is responsible for screening family behavior and suitability for tenancy. In doing so, the MHA may consider an applicant's history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety, or welfare of other tenants.

MHA Policy

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five years, the family will be denied admission.

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 welfare of other tenants [24 CFR 960.203(c)(3)].

Criminal activity that may threaten the health or safety of MHA staff, contractors, subcontractors, or agents.

Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse.

Evidence of such criminal activity includes, but is not limited to any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members within the past 5 years. A conviction for such activity will be given more weight than an arrest or an eviction. 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.

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

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Previous Behavior [960.203(c) and (d) and PH Occ GB, p. 48]

HUD authorizes the MHA to deny admission based on relevant information pertaining to the family's previous behavior and suitability for tenancy.

In the event of the receipt of unfavorable information with respect to an applicant, the MHA must consider the time, nature, and extent of the applicant's conduct (including the seriousness of the offense). As discussed in Section 3-III.F, the MHA may also need to consider whether the cause of the unfavorable information may be that the applicant is the victim of domestic violence, dating violence, sexual assault, or stalking.

MHA Policy

The MHA will deny admission to an applicant family if the MHA determines that the family:

Has a pattern of unsuitable past performance in meeting financial obligations, including rent within the past five years

Has a pattern of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences within the past five years which may adversely affect the health, safety, or welfare of other tenants

Has a pattern of eviction from housing or termination from residential programs within the past five years (considering relevant circumstances)

Owes rent or other amounts to this or any other MHA or owner in connection with any assisted housing program

Misrepresented or does not provide complete information related to eligibility, including income, award of preferences for admission, expenses, family composition or rent

Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program

Has engaged in or threatened violent or abusive behavior toward MHA personnel

Abusive or violent behavior towards MHA 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 admission, the MHA will consider the factors discussed in Sections 3-III.E and 3-III.F. Upon consideration of such factors, the MHA may, on a case-by-case basis, decide not to deny admission.

The MHA will consider the existence of mitigating factors, such as loss of employment or other financial difficulties, before denying admission to an applicant based on the failure to meet prior financial obligations.

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3-III.D. SCREENING

Screening for Eligibility

MHAs are authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the public housing program. This authority assists the MHA in complying with HUD requirements and MHA 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 MHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

The MHA may not pass along to the applicant the costs of a criminal records check [24 CFR 960.204(d)].

> MHA Policy
>
> The MHA will perform criminal background checks for all adult household members.
>
> If the results of the criminal background check indicate there may have been past criminal activity, but the results are inconclusive, the MHA will request a fingerprint card and will request information from the National Crime Information Center (NCIC).

MHAs are required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 960.204(a)(4)].

> MHA Policy
>
> The MHA will use the Dru Sjodin National Sex Offender database to screen applicants for admission.

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

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Obtaining Information from Drug Treatment Facilities [24 CFR 960.205]

HUD authorizes MHAs to request and obtain information from drug abuse treatment facilities concerning applicants. Specifically, the MHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head, spouse, or cohead regardless of age, one or more consent forms signed by such household members that requests any drug abuse treatment facility to inform the MHA whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use.

Drug Abuse Treatment Facility means an entity that holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use, and is either an identified unit within a general care facility, or an entity other than a general medical care facility.

Currently engaging in illegal use of a drug means illegal use of a drug that occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.

Any consent form used for the purpose of obtaining information from a drug abuse treatment facility to determine whether a household member is currently engaging in illegal drug use must expire automatically after the MHA has made a final decision to either approve or deny the admission of such person.

Any charges incurred by the MHA for information provided from a drug abuse treatment facility may not be passed on to the applicant or tenant.

If the MHA chooses to obtain such information from drug abuse treatment facilities, it must adopt and implement one of the two following policies:

Policy A: The MHA must submit a request for information to a drug abuse treatment facility for all families before they are admitted. The request must be submitted for each proposed household member who is at least 18 years of age, and for each family head, spouse, or cohead regardless of age.

Policy B: The MHA must submit a request for information only for certain household members, whose criminal record indicates prior arrests or conviction for any criminal activity that may be a basis for denial of admission or whose prior tenancy records indicate that the proposed household member engaged in destruction of property or violent activity against another person, or they interfered with the right of peaceful enjoyment of the premises of other residents.

If the MHA chooses to obtain such information, it must abide by the HUD requirements for records management and confidentiality as described in 24 CFR 960.205(f).

<u>MHA Policy</u>

The MHA will obtain information from drug abuse treatment facilities to determine whether any applicant family's household members are currently engaging in illegal drug activity only when the MHA has determined that the family will be denied admission based on a family member's drug-related criminal activity, and the family claims that the culpable family member has successfully completed a supervised drug or alcohol rehabilitation program.

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Screening for Suitability as a Tenant [24 CFR 960.203(c)]

The MHA is responsible for the screening and selection of families to occupy public housing units. The MHA may consider all relevant information. Screening is important to public housing communities and program integrity, and to ensure that assisted housing is provided to those families that will adhere to lease obligations.

MHA Policy

The MHA will consider the family's history with respect to the following factors:

Payment of rent and utilities

Caring for a unit and premises

Respecting the rights of other residents to the peaceful enjoyment of their housing

Criminal activity that is a threat to the health, safety, or property of others

Behavior of all household members as related to the grounds for denial as detailed in Sections 3-III. B and C

Compliance with any other essential conditions of tenancy

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Resources Used to Check Applicant Suitability [PH Occ GB, pp. 47-56]

MHAs have a variety of resources available to them for determination of the suitability of applicants. Generally, MHAs should reject applicants who have recent behavior that would warrant lease termination for a public housing resident.

MHA Policy

In order to determine the suitability of applicants the MHA will examine applicant history for the past five years. Such background checks will include:

Past Performance in Meeting Financial Obligations, Especially Rent

MHA and landlord references for the past five years, gathering information about past performance meeting rental obligations such as rent payment record, late payment record, whether the MHA/landlord ever began or completed lease termination for non-payment, and whether utilities were ever disconnected in the unit. MHAs and landlords will be asked if they would rent to the applicant family again.

Utility company references covering the monthly amount of utilities, late payment, disconnection, return of a utility deposit and whether the applicant can get utilities turned on in his/her name. (Use of this inquiry will be reserved for applicants applying for units where there are tenant-paid utilities.)

If an applicant has no rental payment history the MHA will check court records of eviction actions and other financial judgments, and credit reports. A lack of credit history will not disqualify someone from becoming a public housing resident, but a poor credit rating may.

Applicants with no rental payment history will also be asked to provide the MHA with personal references. The references will be requested to complete a verification of the applicant's ability to pay rent if no other documentation of ability to meet financial obligations is available. The applicant will also be required to complete a checklist documenting their ability to meet financial obligations.

If previous landlords or the utility company do not respond to requests from the MHA, the applicant may provide other documentation that demonstrates their ability to meet financial obligations (e.g. rent receipts, cancelled checks, etc.)

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Disturbances of Neighbors, Destruction of Property or Living or Housekeeping Habits at Prior Residences that May Adversely Affect Health, Safety, or Welfare of Other Tenants, or Cause Damage to the Unit or the Development

MHA and landlord references for the past five years, gathering information on whether the applicant kept a unit clean, safe and sanitary; whether they violated health or safety codes; whether any damage was done by the applicant to a current or previous unit or the development, and, if so, how much the repair of the damage cost; whether the applicant's housekeeping caused insect or rodent infestation; and whether the neighbors complained about the applicant or whether the police were ever called because of disturbances.

Police and court records within the past five years will be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in arrest or conviction. A record of arrest(s) will not be used as the basis for the denial or proof that the applicant engaged in disqualifying activity.

A personal reference will be requested to complete a verification of the applicant's ability to care for the unit and avoid disturbing neighbors if no other documentation is available. In these cases, the applicant will also be required to complete a checklist documenting their ability to care for the unit and to avoid disturbing neighbors.

Home visits may be used to determine the applicant's ability to care for the unit.

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3-III.E. CRITERIA FOR DECIDING TO DENY ADMISSION

Evidence

MHA Policy

The MHA will use 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 960.203(c)(3) and (d)]

HUD authorizes the MHA to consider all relevant circumstances when deciding whether to deny admission based on a family's past history except in the situations for which denial of admission is mandated (see Section 3-III.B).

In the event the MHA receives unfavorable information with respect to an applicant, consideration must be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense). In a manner consistent with its policies, MHAs may give consideration to factors which might indicate a reasonable probability of favorable future conduct.

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MHA Policy

The MHA 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 admission 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.F) 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 MHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The MHA 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
- Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs
- In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully
  - The MHA 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.

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Removal of a Family Member's Name from the Application

Should the MHA's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration, the MHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the MHA must deny admission to the family [Notice PIH 2012-28].

For other criminal activity, the MHA may permit the family to exclude the culpable family members as a condition of eligibility. [24 CFR 960.203(c)(3)(i)].

MHA Policy

As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the public housing unit.

After admission to the program, the family must present evidence of the former family member's current address upon MHA request.

Reasonable Accommodation [PH Occ GB, pp. 58-60]

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

MHA Policy

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of admission, the MHA will determine whether the behavior is related to the disability. If so, upon the family's request, the MHA will determine whether alternative measures are appropriate as a reasonable accommodation. The MHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of admission. See Chapter 2 for a discussion of reasonable accommodation.

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3-III.F. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

The Violence against Women Act of 2013 (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit MHAs from denying admission to an otherwise qualified applicant on the basis or as a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

Definitions of key terms used in VAWA are provided in section 16-VII of this ACOP, where general VAWA requirements and policies pertaining to notification, documentation, and confidentiality are also located.

Notification

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

MHA Policy

The MHA 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 MHA's policies.

While the MHA 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 MHA that their status as a victim is directly related to the grounds for the denial. The MHA will request that the applicant provide enough information to the MHA to allow the MHA to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim.

The MHA will include in its notice of denial information about the protection against denial provided by VAWA in accordance with section 16-VII.C of this ACOP, a notice of VAWA rights, and a copy of the form HUD-5382. The MHA will request in writing that an applicant wishing to claim this protection notify the MHA within 14 business days.

Documentation

Victim Documentation [24 CFR 5.2007]

MHA Policy

If an applicant claims the protection against denial of admission that VAWA provides to victims of domestic violence, dating violence, sexual assault, or stalking, the MHA will request in writing that the applicant provide documentation supporting the claim in accordance with section 16-VII.D of this ACOP.

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Perpetrator Documentation

MHA Policy

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 public housing 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.

3-III.G. NOTICE OF ELIGIBILITY OR DENIAL

The MHA will notify an applicant family of its final determination of eligibility in accordance with the policies in Section 4-III.E.

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

MHA Policy

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

Notice requirements related to denying admission to noncitizens are contained in Section 3-II.B.

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, sexual assault, or stalking are contained in Section 3-III.F.

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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

  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 his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

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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

   (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

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

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Chapter 4

APPLICATIONS, WAITING LIST AND TENANT SELECTION

INTRODUCTION

When a family wishes to reside in public housing, the family must submit an application that provides the MHA with the information needed to determine the family's eligibility. HUD requires the MHA to place all eligible families that apply for public housing on a waiting list. When a unit becomes available, the MHA must select families from the waiting list in accordance with HUD requirements and MHA policies as stated in its Admissions and Continued Occupancy Policy (ACOP) and its annual plan.

The MHA is required to adopt a clear approach to accepting applications, placing families on the waiting list, and selecting families from the waiting list, and must follow this approach consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or the MHA to receive preferential treatment.

HUD regulations require that the MHA comply with all equal opportunity requirements and it must affirmatively further fair housing goals in the administration of the program [24 CFR 960.103, PH Occ GB p. 13]. Adherence to the selection policies described in this chapter ensures that the MHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and MHA policies for accepting applications, managing the waiting list and selecting families from the waiting list. The MHAs policies for assigning unit size and making unit offers are contained in Chapter 5. Together, Chapters 4 and 5 of the ACOP comprise the MHA's Tenant Selection and Assignment Plan (TSAP).

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 MHA will handle the applications it receives.
>
> Part II: Managing the Waiting List. This part presents the policies that govern how the MHA's waiting list is structured, when it is opened and closed, and how the public is notified of the opportunity to apply for public housing. It also discusses the process the MHA will use to keep the waiting list current.
>
> Part III: Tenant Selection. This part describes the policies that guide the MHA in selecting families from the waiting list as units become available. It also specifies how in-person interviews will be used to ensure that the MHA has the information needed to make a final eligibility determination.

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PART I: THE APPLICATION PROCESS

4-I.A. OVERVIEW

This part describes the policies that guide the MHA's efforts to distribute and accept applications, and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list. This part also describes the MHA's obligation to ensure the accessibility of the application process.

4-I.B. APPLYING FOR ASSISTANCE

Any family that wishes to reside in public housing must apply for admission to the program [24 CFR 1.4(b)(2)(ii), 24 CFR 960.202(a)(2)(iv), and PH Occ GB, p. 68]. HUD permits the MHA to determine the format and content of its applications, as well how such applications will be made available to interested families and how applications will be accepted by the MHA. However, the MHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the MHA's application [Notice PIH 2009-36].

MHA Policy

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

Families may obtain application forms from the MHA's website www.mhatoday.org. If, when a hardship exists, families may also request – by telephone or by mail – that an application form be sent to the family via first class mail. Families may obtain a housing application for public housing units at the Mixed Finance Owners from their offices during normal business hours.

Completed applications must be returned to the MHA by mail, electronically or submitted in person during normal business hours. Applications must be filled out completely in order to be accepted by the MHA for processing. If an application is incomplete, the MHA will notify the family of the additional information required.

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4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

The MHA must take a variety of steps to ensure that the application process is accessible to those people who might have difficulty complying with the standard MHA application process.

Disabled Populations [24 CFR 8; PH Occ GB, p. 68]

The MHA must provide reasonable accommodation as needed for persons with disabilities to make the application process fully accessible. The facility where applications are accepted and the application process must be fully accessible, or the MHA must provide an alternate approach that provides equal access to the program. Chapter 2 provides a full discussion of the MHA's policies related to providing reasonable accommodations for people with disabilities.

Limited English Proficiency

MHAs are required to take reasonable steps to ensure meaningful access to their programs and activities by persons with limited English proficiency [24 CFR 1]. Chapter 2 provides a full discussion on the MHA's policies related to ensuring access to people with limited English proficiency (LEP).

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4-I.D. PLACEMENT ON THE WAITING LIST

The MHA must review each completed application received and make a preliminary assessment of the family's eligibility. Applicants for whom the waiting list is open must be placed on the waiting list unless the MHA determines the family to be ineligible. Where the family is determined to be ineligible, the MHA must notify the family in writing [24 CFR 960.208(a); PH Occ GB, p. 41].

No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list.

Ineligible for Placement on the Waiting List

MHA Policy

If the MHA determines from the information provided that a family is ineligible, the family will not be placed on the waiting list. When a family is determined to be ineligible, the MHA will send written notification of the ineligibility determination within 10 business days of receipt of the completed application. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal hearing and explain the process for doing so (see Chapter 14).

Eligible for Placement on the Waiting List

MHA Policy

The MHA will send written notification of the preliminary eligibility determination within 10 business days of receiving a completed application. If applicable, the notice will also indicate the waiting list preference(s) for which the family appears to qualify.

Applicants will be placed on the waiting list according to MHA preference(s) and the date and time their complete application is received by the MHA.

The MHA will assign families on the waiting list according to the bedroom size for which a family qualifies as established in its occupancy standards (see Chapter 5). Families may request to be placed on the waiting list for a unit size smaller than designated by the occupancy guidelines (as long as the unit is not overcrowded according to MHA standards and local codes). However, in these cases, the family must agree not to request a transfer for two years after admission, unless they have a change in family size or composition.

Placement on the waiting list does not indicate that the family is, in fact, eligible for admission. When the family is selected from the waiting list, the MHA will verify any preference(s) claimed and determine eligibility and suitability for admission to the program.

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PART II: MANAGING THE WAITING LIST

4-II.A. OVERVIEW

The MHA must have policies regarding the type of waiting list it will utilize as well as how the waiting list will be organized and managed. This includes policies on notifying the public on the opening and closing of the waiting list to new applicants, updating family information, purging the list of families that are no longer interested in or eligible for public housing, and conducting outreach to ensure a sufficient number of applicants.

In addition, HUD imposes requirements on how the MHA may structure its waiting list and how families must be treated if they apply for public housing at a MHA that administers more than one assisted housing program.

4-II.B. ORGANIZATION OF THE WAITING LIST

The MHA's public housing waiting list must be organized in such a manner to allow the MHA to accurately identify and select families in the proper order, according to the admissions policies described in this ACOP.

MHA Policy

The waiting list will contain the following information for each applicant listed:

Name and social security number of head of household

Unit size required (number of family members)

Amount and source of annual income

Accessibility requirement, if any

Date and time of application or application number

Household type (family, elderly, disabled)

Admission preference, if any

Race and ethnicity of the head of household

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The MHA may adopt one community-wide waiting list or site-based waiting lists. The MHA must obtain approval from HUD through submission of its Annual Plan before it may offer site-based waiting lists. Site-based waiting lists allow families to select the development where they wish to reside and must be consistent with all applicable civil rights and fair housing laws and regulations [24 CFR 903.7(b)(2)].

MHA Policy

The MHA will maintain one single community-wide waiting list for its developments. Within the list, the MHA will designate subparts to easily identify who should be offered the next available unit (i.e. mixed populations, general occupancy, unit size, and accessible units).

HUD requires that public housing applicants must be offered the opportunity to be placed on the waiting list for any tenant-based or project-based voucher or moderate rehabilitation program that the MHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs [24 CFR 982.205(a)(2)(i)].

HUD permits, but does not require, that MHAs maintain a single merged waiting list for their public housing, Section 8, and other subsidized housing programs [24 CFR 982.205(a)(1)].

MHA Policy

The MHA will not merge the public housing waiting list with the waiting list for any other program the MHA operates.

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4-II.C. OPENING AND CLOSING THE WAITING LIST

Closing the Waiting List

The MHA is permitted to close the waiting list, in whole or in part, if it has an adequate pool of families to fully lease units in all of its developments. The MHA may close the waiting list completely, or restrict intake by preference, type of project, or by size and type of dwelling unit. [PH Occ GB, p. 31].

MHA Policy

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

Reopening the Waiting List

If the waiting list has been closed, it may be reopened at any time. The MHA should publish a notice announcing the opening of the waiting list in local newspapers of general circulation, minority media, and other suitable media outlets. Such notice must comply with HUD fair housing requirements. The MHA should specify who may apply, and where and when applications will be received.

MHA Policy

The MHA will announce the reopening of the waiting list at least 10 business days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice. The notice will specify where, when, and how applications are to be received.

The MHA or Mixed Finance Owner will give public notice by publishing the relevant information in suitablemedia outlets .

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4-II.D. FAMILY OUTREACH [24 CFR 903.2(d); 24 CFR 903.7(a) and (b)]

The MHA should conduct outreach as necessary to ensure that the MHA has a sufficient number of applicants on the waiting list to fill anticipated vacancies and to assure that the MHA is affirmatively furthering fair housing and complying with the Fair Housing Act.

Because HUD requires the MHA to admit a specified percentage of extremely low income families, the MHA may need to conduct special outreach to ensure that an adequate number of such families apply for public housing.

MHA outreach efforts must comply with fair housing requirements. This includes:

- Analyzing the housing market area and the populations currently being served to identify underserved populations
- Ensuring that outreach efforts are targeted to media outlets that reach eligible populations that are underrepresented in the program
- Avoiding outreach efforts that prefer or exclude people who are members of a protected class

MHA outreach efforts must be designed to inform qualified families about the availability of units under the program. These efforts may include, as needed, any of the following activities:

- Submitting press releases to local newspapers, including minority newspapers
- Developing informational materials and flyers to distribute to other agencies
- Providing application forms to other public and private agencies that serve the low income population
- Developing partnerships with other organizations that serve similar populations, including agencies that provide services for persons with disabilities

<u>MHA Policy</u>

The MHA will monitor the characteristics of the population being served and the characteristics of the population as a whole in the MHA's jurisdiction. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are being underserved.

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4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

MHA Policy

While the family is on the waiting list, the family must inform the MHA, within 10 business days, of changes in family size or composition, preference status, or contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing.

Changes in an applicant's circumstances while on the waiting list may affect the family's qualification for a particular bedroom size or entitlement to a preference. When an applicant reports a change that affects their placement on the waiting list, the waiting list will be updated accordingly.

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4-II.F. UPDATING THE WAITING LIST

HUD requires the MHA to establish policies that describe the circumstances under which applicants will be removed from the waiting list [24 CFR 960.202(a)(2)(iv)].

Purging the Waiting List

The decision to remove an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to the MHA's request for information or updates because of the family member's disability, the MHA must, upon the family's request, reinstate the applicant family to their former position on the waiting list as a reasonable accommodation [24 CFR 8.4(a), 24 CFR 100.204(a), and PH Occ GB, p. 39 and 40]. See Chapter 2 for further information regarding reasonable accommodations.

MHA Policy

The waiting list will be updated as needed to ensure that all applicant information is current and timely.

To update the waiting list, the MHA 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 the MHA 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 or by email. Responses should be postmarked or received by the MHA not later than 15 business days from the date of the MHA 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 the family fails to respond within this time frame, the family will be removed from the waiting list without further notice.

When a family is removed from the waiting list during the update process for failure to respond, no informal hearing will be offered. Such failures to act on the part of the applicant prevent the MHA from making an eligibility determination; therefore no informal hearing is required.

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

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Removal from the Waiting List

MHA Policy

The MHA will remove an applicant from the waiting list upon request by the applicant family. In such cases no informal hearing is required.

If the MHA determines that the family is not eligible for admission (see Chapter 3) at any time while the family is on the waiting list the family will be removed from the waiting list.

If a family is removed from the waiting list because the MHA has determined the family is not eligible for admission, a notice will be sent to the family's address of record as well as to any alternate address provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal hearing regarding the MHA's decision (see Chapter 14) [24 CFR 960.208(a)].

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PART III: TENANT SELECTION

4-III.A. OVERVIEW

The MHA must establish tenant selection policies for families being admitted to public housing [24 CFR 960.201(a)]. The MHA must not require any specific income or racial quotas for any developments [24 CFR 903.2(d)]. The MHA must not assign persons to a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status or national origin for purposes of segregating populations [24 CFR 1.4(b)(1)(iii) and 24 CFR 903.2(d)(1)].

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

The MHA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to the MHA's selection policies [24 CFR 960.206(e)(2)]. The MHA's policies must be posted any place where the MHA receives applications. The MHA must provide a copy of its tenant selection policies upon request to any applicant or tenant. The MHA may charge the family for providing a copy of its tenant selection policies [24 CFR 960.202(c)(2)].

MHA Policy

When an applicant or resident family requests a copy of the MHA's tenant selection policies, the MHA will provide copies to them free of charge.

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4-III.B. SELECTION METHOD

MHAs must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the MHA will use.

Local Preferences [24 CFR 960.206]

MHAs are permitted to establish local preferences and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits the MHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the MHA plan and the consolidated plan, and must be based on local housing needs and priorities that can be documented by generally accepted data sources [24 CFR 960.206(a)].

MHA Policy

The MHA will use the following local preferences:

In order to bring higher income families into public housing, the MHA will establish a preference for "working" families, where the head, spouse, cohead, or sole member is employed at least 20 hours per week. As required by HUD, families where the head and spouse, or sole member is a person age 62 or older, or is a person with disabilities, will also be given the benefit of the working preference [24 CFR 960.206(b)(2)].

The MHA will offer a preference to families that include victims of domestic violence, dating violence, sexual assault, or stalking who has either been referred by a partnering service agency or consortia or who is seeking an emergency transfer under VAWA from the MHA's housing choice voucher program or other covered housing program operated by the MHA.

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

Local preferences will be aggregated using a system in which each preference will receive an allocation of points. The more preference points an applicant has, the higher the applicant's place on the waiting list.

The preference for victims of domestic violence, dating violence, sexual assault, or stalking seeking an emergency transfer will be equal to two points.

The preference for working families will be equal to one point.

Applicants qualifying for both preferences will thus be assigned a total of three points. Among applicants who qualify for two preferences, date and time of application will be used to determine placement on the waiting list.

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Income Targeting Requirement [24 CFR 960.202(b)]

HUD requires that extremely low-income (ELI) families make up at least 40 percent of the families admitted to public housing during the MHA's fiscal year. ELI families are those with annual incomes at or below the federal poverty level or 30 percent of the area median income, whichever number is higher [*Federal Register* notice 6/25/14]. To ensure this requirement is met, the MHA may skip non-ELI families on the waiting list in order to select an ELI family.

If a MHA also operates a housing choice voucher (HCV) program, admissions of extremely low-income families to the MHA's HCV program during a MHA fiscal year that exceed the 75 percent minimum target requirement for the voucher program, shall be credited against the MHA's basic targeting requirement in the public housing program for the same fiscal year. However, under these circumstances the fiscal year credit to the public housing program must not exceed the lower of: (1) ten percent of public housing waiting list admissions during the MHA fiscal year; (2) ten percent of waiting list admissions to the MHA's housing choice voucher program during the MHA fiscal year; or (3) the number of qualifying low-income families who commence occupancy during the fiscal year of MHA public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low-income family means a low-income family other than an extremely low-income family.

MHA Policy

The MHA will monitor progress in meeting the ELI requirement throughout the fiscal year. ELI families will be selected ahead of other eligible families on an as-needed basis to ensure that the income targeting requirement is met.

Mixed Population Developments [24 CFR 960.407]

A mixed population development is a public housing development or portion of a development that was reserved for elderly families and disabled families at its inception (and has retained that character) or the MHA at some point after its inception obtained HUD approval to give preference in tenant selection for all units in the development (or portion of a development) to elderly and disabled families [24 CFR 960.102]. Elderly family means a family whose head, spouse, cohead, or sole member is a person who is at least 62 years of age. Disabled family means a family whose head, spouse, cohead, or sole member is a person with disabilities [24 CFR 5.403]. The MHA must give elderly and disabled families equal preference in selecting these families for admission to mixed population developments. The MHA may not establish a limit on the number of elderly or disabled families that may occupy a mixed population development. In selecting elderly and disabled families to fill these units, the MHA must first offer the units that have accessibility features for families that include a person with a disability and require the accessibility features of such units. The MHA may not discriminate against elderly or disabled families that include children (Fair Housing Amendments Act of 1988).

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Units Designated for Elderly or Disabled Families [24 CFR 945]

The MHA may designate projects or portions of a public housing project specifically for elderly or disabled families. The MHA must have a HUD-approved allocation plan before the designation may take place.

Among the designated developments, the MHA must also apply any preferences that it has established. If there are not enough elderly families to occupy the units in a designated elderly development, the MHA may allow near-elderly families to occupy the units [24 CFR 945.303(c)(1)]. Near-elderly family means a family whose head, spouse, or cohead is at least 50 years old, but is less than 62 [24 CFR 5.403].

If there are an insufficient number of elderly families and near-elderly families for the units in a development designated for elderly families, the MHA must make available to all other families any unit that is ready for re-rental and has been vacant for more than 60 consecutive days [24 CFR 945.303(c)(2)].

The decision of any disabled family or elderly family not to occupy or accept occupancy in designated housing shall not have an adverse affect on their admission or continued occupancy in public housing or their position on or placement on the waiting list. However, this protection does not apply to any family who refuses to occupy or accept occupancy in designated housing because of the race, color, religion, sex, disability, familial status, or national origin of the occupants of the designated housing or the surrounding area [24 CFR 945.303(d)(1) and (2)].

This protection does apply to an elderly family or disabled family that declines to accept occupancy, respectively, in a designated project for elderly families or for disabled families, and requests occupancy in a general occupancy project or in a mixed population project [24 CFR 945.303(d)(3)].

MHA Policy

The MHA does not have designated elderly or designated disabled housing at this time.

Deconcentration of Poverty and Income-Mixing [24 CFR 903.1 and 903.2]

The MHA's admission policy must be designed to provide for deconcentration of poverty and income-mixing by bringing higher income tenants into lower income projects and lower income tenants into higher income projects. A statement of the MHA's deconcentration policies must be in included in its annual plan [24 CFR 903.7(b)].

The MHA's deconcentration policy must comply with its obligation to meet the income targeting requirement [24 CFR 903.2(c)(5)].

Developments subject to the deconcentration requirement are referred to as 'covered developments' and include general occupancy (family) public housing developments. The following developments are not subject to deconcentration and income mixing requirements: developments operated by a MHA with fewer than 100 public housing units; mixed population or developments designated specifically for elderly or disabled families; developments operated by a MHA with only one general occupancy development; developments approved for demolition or for conversion to tenant-based public housing; and developments approved for a mixed-finance plan using HOPE VI or public housing funds [24 CFR 903.2(b)].

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Steps for Implementation [24 CFR 903.2(c)(1)]

To implement the statutory requirement to deconcentrate poverty and provide for income mixing in covered developments, the MHA must comply with the following steps:

Step 1. The MHA must determine the average income of all families residing in all the MHA's covered developments. The MHA may use the median income, instead of average income, provided that the MHA includes a written explanation in its annual plan justifying the use of median income.

MHA Policy

The MHA will determine the average income of all families in all covered developments on an annual basis.

Step 2. The MHA must determine the average income (or median income, if median income was used in Step 1) of all families residing in each covered development. In determining average income for each development, the MHA has the option of adjusting its income analysis for unit size in accordance with procedures prescribed by HUD.

MHA Policy

The MHA will determine the average income of all families residing in each covered development (not adjusting for unit size) on an annual basis.

Step 3. The MHA must then determine whether each of its covered developments falls above, within, or below the established income range (EIR), which is from 85% to 115% of the average family income determined in Step 1. However, the upper limit must never be less than the income at which a family would be defined as an extremely low-income family (federal poverty level or 30 percent of median income, whichever number is higher).

Step 4. The MHA with covered developments having average incomes outside the EIR must then determine whether or not these developments are consistent with its local goals and annual plan.

Step 5. Where the income profile for a covered development is not explained or justified in the annual plan submission, the MHA must include in its admission policy its specific policy to provide for deconcentration of poverty and income mixing.

Depending on local circumstances the MHA's deconcentration policy may include, but is not limited to the following:

- Providing incentives to encourage families to accept units in developments where their income level is needed, including rent incentives, affirmative marketing plans, or added amenities
- Targeting investment and capital improvements toward developments with an average income below the EIR to encourage families with incomes above the EIR to accept units in those developments
- Establishing a preference for admission of working families in developments below the EIR

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- Skipping a family on the waiting list to reach another family in an effort to further the goals of deconcentration
- Providing other strategies permitted by statute and determined by the MHA in consultation with the residents and the community through the annual plan process to be responsive to local needs and MHA strategic objectives

A family has the sole discretion whether to accept an offer of a unit made under the MHA's deconcentration policy. The MHA must not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under the MHA's deconcentration policy [24 CFR 903.2(c)(4)].

If, at annual review, the average incomes at all general occupancy developments are within the EIR, the MHA will be considered to be in compliance with the deconcentration requirement and no further action is required.

Order of Selection [24 CFR 960.206(e)]

The MHA system of preferences may select families either according to the date and time of application or by a random selection process.

MHA Policy

Families will be selected from the waiting list based on preference. Among applicants with the same preference, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the MHA.

When selecting applicants from the waiting list, the MHA will match the characteristics of the available unit (unit size, accessibility features, unit type) to the applicants on the waiting lists. The MHA will offer the unit to the highest ranking applicant who qualifies for that unit size or type, or that requires the accessibility features.

By matching unit and family characteristics, it is possible that families who are lower on the waiting list may receive an offer of housing ahead of families with an earlier date and time of application or higher preference status.

Factors such as deconcentration or income mixing and income targeting will also be considered in accordance with HUD requirements and MHA policy.

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4-III.C. NOTIFICATION OF SELECTION

When the family has been selected from the waiting list, the MHA must notify the family [24 CFR 960.208].

MHA Policy

The MHA will notify the family by first class mail when it is selected from the waiting list.

The notice will inform the family of the following:

Date, time, and location of the scheduled application interview, including any procedures for rescheduling the interview

Who is required to attend the interview

Documents that must be provided at the interview to document the legal identity of household members, including information about what constitutes acceptable documentation

Documents that must be provided at the interview to document eligibility for a preference, if applicable

Other documents and information that should be brought to the interview

If a notification letter is returned to the MHA with no forwarding address, the family will be removed from the waiting list without further notice. Such failure to act on the part of the applicant prevents the MHA from making an eligibility determination; therefore no informal hearing will be offered.

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4-III.D. THE APPLICATION INTERVIEW

HUD recommends that the MHA obtain the information and documentation needed to make an eligibility determination through a private interview. Being invited to attend an interview does not constitute admission to the program.

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if the MHA determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by the MHA [Notice PIH 2018-24].

Reasonable accommodation must be made for persons with disabilities who are unable to attend an interview due to their disability [24 CFR 8.4(a) and 24 CFR 100.204(a)].

MHA Policy

Families selected from the waiting list are required to participate in an eligibility interview.

The head of household and the spouse/cohead will be strongly encouraged to attend the interview together. However, either the head of household or the spouse/cohead 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 MHA.

The interview will be conducted only if the head of household or spouse/cohead provides appropriate documentation of legal identity (Chapter 7 provides a discussion of proper documentation of legal identity). If the family representative does not provide the required documentation, the appointment may be rescheduled when the proper documents have been obtained.

Pending disclosure and documentation of social security numbers, the MHA will allow the family to retain its place on the waiting list for ***[insert amount of time reasonable for MHA]***. If not all household members have disclosed their SSNs at the next time a unit becomes available, the MHA will offer a unit to the next eligible applicant family on the waiting list.

If the family is claiming a waiting list preference, the family must provide documentation to verify their eligibility for a preference (see Chapter 7). If the family is verified as eligible for the preference, the MHA will proceed with the interview. If the MHA determines the family is not eligible for the preference, the interview will not proceed and the family will be placed back on the waiting list according to the date and time of their application.

The family must provide the information necessary to establish the family's eligibility, including suitability, and to determine the appropriate amount of rent the family will pay. The family must also complete required forms, provide required signatures, and submit required documentation. If any materials are missing, the MHA will provide the family with a written list of items that must be submitted.

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Any required documents or information that the family is unable to provide at the interview must be provided within 10 business days of the interview (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of Social Security numbers and eligible noncitizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (see Chapter 3).

An advocate, interpreter, or other assistant may assist the family with the application and the interview process.

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

If the family is unable to attend a scheduled interview, the family should contact the MHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, the MHA will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without MHA approval will have their applications made inactive based on the family's failure to supply information needed to determine eligibility. The second appointment letter will state that failure to appear for the appointment without a request to reschedule will be interpreted to mean that the family is no longer interested and their application will be made inactive. Such failure to act on the part of the applicant prevents the MHA from making an eligibility determination, therefore the MHA will not offer an informal hearing.

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4-III.E. FINAL ELIGIBILITY DETERMINATION [24 CFR 960.208]

The MHA must verify all information provided by the family (see Chapter 7). Based on verified information related to the eligibility requirements, including MHA suitability standards, the MHA must make a final determination of eligibility (see Chapter 3).

When a determination is made that a family is eligible and satisfies all requirements for admission, including tenant selection criteria, the applicant must be notified of the approximate date of occupancy insofar as that date can be reasonably determined [24 CFR 960.208(b)].

> MHA Policy
>
> The MHA will notify a family in writing of their eligibility within 10 business days of the determination and will provide the approximate date of occupancy insofar as that date can be reasonably determined.
>
> The MHA will expedite the administrative process for determining eligibility to the extent possible for applicants who are admitted to the public housing program as a result of an emergency transfer from another MHA program.

The MHA must promptly notify any family determined to be ineligible for admission of the basis for such determination, and must provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination [24 CFR 960.208(a)].

> MHA Policy
>
> If the MHA determines that the family is ineligible, the MHA 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 hearing (see Chapter 14).

If the MHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the MHA can move to deny the application. See Section 3-III.G for the MHA's policy regarding such circumstances.

The MHA must provide the family a notice of VAWA rights (form HUD-5380) as well as the HUD VAWA self-certification form (form HUD-5382) in accordance with the Violence against Women Act of 2013, and as outlined in 16-VII.C, at the time the applicant is provided assistance or at the time the applicant is denied assistance. This notice must be provided in both of the following instances: (1) when a family actually begins receiving assistance lease execution); or (2) when a family is notified of its ineligibility.

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Chapter 5

OCCUPANCY STANDARDS AND UNIT OFFERS

INTRODUCTION

The MHA must establish policies governing occupancy of dwelling units and offering dwelling units to qualified families.

This chapter contains policies for assigning unit size and making unit offers. The MHA's waiting list and selection policies are contained in Chapter 4. Together, Chapters 4 and 5 of the ACOP comprise the MHA's Tenant Selection and Assignment Plan (TSAP).

Policies in this chapter are organized in two parts.

> Part I: Occupancy Standards. This part contains the MHA's standards for determining the appropriate unit size for families of different sizes, compositions, and types.
>
> Part II: Unit Offers. This part contains the MHA's policies for making unit offers, and describes actions to be taken when unit offers are refused.

PART I: OCCUPANCY STANDARDS

5-I.A. OVERVIEW

Occupancy standards are established by the MHA to ensure that units are occupied by families of the appropriate size. This policy maintains the maximum usefulness of the units, while preserving them from underutilization or from excessive wear and tear due to overcrowding. Part I of this chapter explains the occupancy standards. These standards describe the methodology and factors the MHA will use to determine the size unit for which a family qualifies, and includes the identification of the minimum and maximum number of household members for each unit size. This part also identifies circumstances under which an exception to the occupancy standards may be approved.

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5-I.B. DETERMINING UNIT SIZE

In selecting a family to occupy a particular unit, the MHA may match characteristics of the family with the type of unit available, for example, number of bedrooms [24 CFR 960.206(c)].

HUD does not specify the number of persons who may live in public housing units of various sizes. MHAs are permitted to develop appropriate occupancy standards as long as the standards do not have the effect of discriminating against families with children [PH Occ GB, p. 62].

Although the MHA does determine the size of unit the family qualifies for under the occupancy standards, the MHA does not determine who shares a bedroom/sleeping room.

The MHA's occupancy standards for determining unit size must be applied in a manner consistent with fair housing requirements.

MHA Policy

The MHA will use the same occupancy standards for each of its developments.

The MHA's occupancy standards are as follows:

The MHA will assign one bedroom for each two persons within the household, except in the following circumstances:

Persons of different generations will not be required to share a bedroom, except:

A single pregnant woman with no other household members and a single parents with one child and no other household members will be assigned a one-bedroom unit. Assuming no other changes in family composition, after the child reaches the age of **[number of]** years, the family will be eligible for a transfer to a 2-bedroom unit.

Otherwise, an unborn child will not be counted as a person in determining unit size.

Live-in aides will be allocated a separate bedroom. No additional bedrooms will be provided for the live-in aide's family.

Single person families will be allocated a zero or one bedroom.

Children related to a household member by birth, adoption, or court awarded custody will be considered when determining unit size.

Foster children will be considered when determining unit size. The family may add foster children to the household as long as it does not overcrowd the unit based on the MHA's occupancy standards.

Children away at school, but for whom the unit is considered the primary residence, and children temporarily placed outside the home, will be considered when determining unit size.

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Children in the process of being adopted will be considered when determining unit size.

Children who will live in the unit less than 50 percent of the time will not be considered when determining unit size.

The MHA will reference the following standards in determining the appropriate unit bedroom size for a family:

BEDROOM SIZE	MINIMUM NUMBER OF PERSONS	MAXIMUM NUMBER OF PERSONS
0	1	1
1	1	2
2	2	4
3	3	6
4	4	8
5	6	10
6	8	12

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5-I.C. EXCEPTIONS TO OCCUPANCY STANDARDS

Types of Exceptions

MHA Policy

The MHA will consider granting exceptions to the occupancy standards at the family's request if the MHA determines the exception is justified by the relationship, age, sex, health or disability of family members, or other personal circumstances.

For example, an exception may be granted if a larger bedroom size is needed for medical equipment due to its size and/or function, or as a reasonable accommodation for a person with disabilities. An exception may also be granted for a smaller bedroom size in cases where the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides (according to the chart in Section 5-I.B) and the family does not want to transfer to a larger size unit.

When evaluating exception requests the MHA will consider the size and configuration of the unit. In no case will the MHA grant an exception that is in violation of local housing or occupancy codes, regulations or laws.

Requests from applicants to be placed on the waiting list for a unit size smaller than designated by the occupancy standards will be approved as long as the unit is not overcrowded according to local code, and the family agrees not to request a transfer for a period of two years from the date of admission, unless they have a subsequent change in family size or composition.

To prevent vacancies, the MHA may provide an applicant family with a larger unit than the occupancy standards permit. However, in these cases the family must agree to move to a suitable, smaller unit when another family qualifies for the larger unit and there is an appropriate size unit available for the family to transfer to.

Processing of Exceptions

MHA Policy

All requests for exceptions to the occupancy standards must be submitted in writing.

In the case of a request for exception as a reasonable accommodation, the MHA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, the MHA will consider the exception request any time the resident indicates that an accommodation is needed whether or not a formal written request is submitted.

Requests for a larger size unit must explain the need or justification for the larger size unit, and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source, unless the disability and the disability-related request for accommodation is readily apparent or otherwise known.

The MHA will notify the family of its decision within 10 business days of receiving the family's request.

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PART II: UNIT OFFERS

24 CFR 1.4(b)(2)(ii); 24 CFR 960.208

5-II.A. OVERVIEW

The MHA must assign eligible applicants to dwelling units in accordance with a plan that is consistent with civil rights and nondiscrimination laws.

In filling an actual or expected vacancy, the MHA must offer the dwelling unit to an applicant in the appropriate offer sequence. The MHA will offer the unit until it is accepted. This section describes the MHA's policies with regard to the number of unit offers that will be made to applicants selected from the waiting list. This section also describes the MHA's policies for offering units with accessibility features.

MHA Policy

The MHA will maintain a record of units offered, including location, date and circumstances of each offer, each acceptance or rejection, including the reason for the rejection.

5-II.B. NUMBER OF OFFERS

MHA Policy

The MHA has adopted a "two-to-three offer plan" for offering units to applicants. Under this plan, the MHA will determine how many locations within its jurisdiction have available units of suitable size and type in the appropriate type of project. The number of unit offers will be based on the distribution of vacancies. If a suitable unit is available in:

Three (3) or more locations: The applicant will be offered a unit in the location with the highest number of vacancies. If the offer is rejected, the applicant will be offered a suitable unit in the location with the second highest number of vacancies. If that unit is rejected, a final offer will be made in the location with the third highest number of vacancies. The offers will be made in sequence and the applicant must refuse an offer before another is made.

Two (2) locations: The applicant will be offered a suitable unit in the location with the higher number of vacancies. If the offer is rejected, a final offer will be made at the other location. The offers will be made in sequence and the applicant must refuse the first offer before a second offer is made.

One (1) location: The applicant will be offered a suitable unit in that location. If the offer is rejected, the applicant will be offered the next suitable unit that becomes available, whether it is at the same location as the first offer or at another location. The second unit offer will be the final offer, unless there is good cause for refusing the offer.

If more than one unit of the appropriate type and size is available, the first unit to be offered will be the first unit that is ready for occupancy.

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5-II.C. TIME LIMIT FOR UNIT OFFER ACCEPTANCE OR REFUSAL

MHA Policy

Applicants must accept or refuse a unit offer within 3 business days of the date of the unit offer.

Offers made by telephone will be confirmed by letter.

5-II.D. REFUSALS OF UNIT OFFERS

Good Cause for Unit Refusal

An elderly or disabled family may decline an offer for designated housing. Such a refusal must not adversely affect the family's position on or placement on the public housing waiting list [24 CFR 945.303(d)].

MHA Policy

Applicants may refuse to accept a unit offer for "good cause." *Good cause* includes situations in which an applicant is willing to move but is unable to do so at the time of the unit offer, or the applicant demonstrates that acceptance of the offer would cause undue hardship not related to considerations of the applicant's race, color, national origin, etc. [PH Occ GB, p. 104]. Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

The family demonstrates to the MHA's satisfaction that accepting the unit offer will require an adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities.

The family demonstrates to the MHA's satisfaction that accepting the offer will place a family member's life, health, or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders; other court orders; risk assessments related to witness protection from a law enforcement agency; or documentation of domestic violence, dating violence, sexual assault, or stalking in accordance with section 16-VII.D of this ACOP. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption.

A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member.

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The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move.

The unit has lead-based paint and the family includes children under the age of six.

In the case of a unit refusal for good cause the applicant will not be removed from the waiting list as described later in this section. The applicant will remain at the top of the waiting list until the family receives an offer for which they do not have good cause to refuse.

The MHA will require documentation of good cause for unit refusals.

Unit Refusal without Good Cause

MHA Policy

When an applicant rejects the final unit offer without good cause, the MHA will remove the applicant's name from the waiting list and send notice to the family of such removal. The notice will inform the family of their right to request an informal hearing and the process for doing so (see Chapter 14).

The applicant may reapply for assistance if the waiting list is open. If the waiting list is not open, the applicant must wait to reapply until the MHA opens the waiting list.

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5-II.E. ACCESSIBLE UNITS [24 CFR 8.27]

MHAs must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with disabilities, and take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of a particular unit.

When an accessible unit becomes vacant, before offering such units to a non-disabled applicant the MHA must offer such units:

- First, to a current resident of another unit of the same development, or other public housing development under the MHA's control, who has a disability that requires the special features of the vacant unit and is occupying a unit not having such features, or if no such occupant exists, then
- Second, to an eligible qualified applicant on the waiting list having a disability that requires the special features of the vacant unit.

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

MHA Policy

Families requiring an accessible unit may be over-housed in such a unit if there are no resident or applicant families of the appropriate size who also require the accessible features of the unit.

When there are no resident or applicant families requiring the accessible features of the unit, including families who would be over-housed, the MHA will offer the unit to a non-disabled applicant.

When offering an accessible unit to a non-disabled applicant, the MHA will require the applicant to agree to move to an available non-accessible unit within 30 days when either a current resident or an applicant needs the features of the unit and there is another unit available for the non-disabled family. This requirement will be a provision of the lease agreement.

5-II.F. DESIGNATED HOUSING

When applicable, the MHA's policies for offering units designated for elderly families only or for disabled families only are described in the MHA's Designated Housing Plan.

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Chapter 6

INCOME AND RENT DETERMINATIONS

[24 CFR Part 5, Subparts E and F; 24 CFR 960, Subpart C]

INTRODUCTION

A family's annual income is used to determine their income eligibility for the public housing program and is also used to calculate the amount of the family's rent payment. The MHA will use the policies and methods described in this chapter to ensure that only income-eligible families receive assistance and that no family pays more or less rent than is required under the regulations. This chapter describes HUD regulations and MHA policies related to these topics in three parts 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 MHA policies for calculating annual income are found in Part I.

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

Part III: Calculating Rent. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining family rent payment. Also included here are flat rents and the family's choice in rents.

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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 (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 ACOP, 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.

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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.

Summary of Income Included and Excluded by Person	
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(a)(1)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or cohead)	Employment income above $480/year is excluded [24 CFR 5.609(c)(11)]. All other sources of income, except those specifically excluded by the regulations, are included.

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].

MHA Policy

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

MHA Policy

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

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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].

MHA Policy

If a child has been placed in foster care, the MHA 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 Cohead

MHA Policy

An employed head, spouse, or cohead absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

Individuals Confined for Medical Reasons

MHA Policy

An individual confined to a nursing home or hospital on a permanent basis is not considered a family member.

If there is a question about the status of a family member, the MHA 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.

Joint Custody of Children

MHA Policy

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

When more than one applicant or assisted family (regardless of program) are 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 MHA will make the determination based on available documents such as court orders, an IRS income tax return showing which family has claimed the child for income tax purposes, school records, or other credible documentation.

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Caretakers for a Child

MHA Policy

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

If a responsible agency has determined that another adult is to be brought into the 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.

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 MHA will extend the caretaker's status as an eligible visitor.

At any time that custody or guardianship legally has been awarded to a caretaker, the lease will be transferred to the caretaker, as head of household.

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.

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6-I.C. ANTICIPATING ANNUAL INCOME

The MHA 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)]. Policies related to anticipating annual income are provided below.

Basis of Annual Income Projection

The MHA generally will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes the MHA to use other than current circumstances to anticipate income when:

- An imminent change in circumstances is expected [HCV GB, p. 5-17]
- It is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income) [24 CFR 5.609(d)]
- The MHA believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

MHAs 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 MHAs to use tenant-provided documents 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 MHA does not determine it is necessary to obtain additional third-party data.

MHA Policy

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

The MHA 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 MHA determines additional information is needed.

In such cases, the MHA 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 MHA annualized projected income.

When the MHA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the MHA 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.

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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 MHA to show why the historic pattern does not represent the family's anticipated income.

Known Changes in Income

If the MHA 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 MHA would calculate annual income as follows: ($8/hour × 40 hours × 7 weeks) + ($8.25 × 40 hours × 45 weeks).

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

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

Projecting Income

In HUD's EIV webcast of January 2008, HUD made clear that MHAs are not to use EIV quarterly wages to project annual income.

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6-I.D. EARNED INCOME

Types of Earned Income Included in Annual Income

Wages and Related Compensation [24 CFR 5.609(b)(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 is included in annual income.

MHA Policy

For persons who regularly receive bonuses or commissions, the MHA will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, the MHA will use the prior year amounts. In either case the family may provide, and the MHA 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, the MHA 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)]

This type of income (including gifts) is not included in annual income.

MHA Policy

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 [24 CFR 5.609(c)(1)]

Employment income earned by children (including foster children) under the age of 18 years is not included in annual income. (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 cohead) 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.)

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Income Earned under Certain Federal Programs [24 CFR 5.609(c)(17)]

Income from some federal programs is specifically excluded from consideration as income, 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 [24 CFR 5.600(c)(8)(iv)]

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 MHA, 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 MHA's governing board. No resident may receive more than one such stipend during the same period of time.

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State and Local Employment Training Programs

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

MHA Policy

The MHA defines *training program* as "a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period 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].

The MHA 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 MHA 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 MHA's interim reporting requirements (see chapter on reexaminations).

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HUD-Funded Training Programs

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

MHA Policy

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

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

Earned Income Disallowance. The earned income disallowance is discussed in section 6-I.E below.

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6-I.E. EARNED INCOME DISALLOWANCE [24 CFR 960.255; Streamlining Final Rule (SFR) Federal Register 3/8/16]

The earned income disallowance (EID) encourages people to enter the work force by not including the full value of increases in earned income for a period of time. The full text of 24 CFR 960.255 is included as Exhibit 6-4 at the end of this chapter. Eligibility criteria and limitations on the disallowance are summarized below.

Eligibility

This disallowance applies only to individuals in families already participating in the public housing 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 was previously unemployed for one or more years prior to employment. *Previously unemployed* includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.
- Increased earnings by a family member 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 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.

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Calculation of the Disallowance

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "baseline income." The family member's baseline income is his or her income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that he or she is participating in the EID.

While qualification for the disallowance is the same for all families, calculation of the disallowance will differ depending on when the family member qualified for the EID. Residents qualifying prior to May 9, 2016 will have the disallowance calculated under the "Original Calculation Method" described below, which requires a maximum lifetime disallowance period of up to 48 consecutive months. Residents qualifying on or after May 9, 2016 will be subject to the "Revised Calculation Method," which shortens the lifetime disallowance period to 24 consecutive months.

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

Original Calculation Method

Initial 12-Month Exclusion

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

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

Second 12-Month Exclusion and Phase-In

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

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Lifetime Limitation

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

MHA Policy

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

Revised Calculation Method

Initial 12-Month Exclusion

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

MHA Policy

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

Second 12-Month Exclusion

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

MHA Policy

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

Lifetime Limitation

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

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Individual Savings Accounts [24 CFR 960.255(d)]

MHA Policy

The MHA chooses not to establish a system of individual savings accounts (ISAs) for families who qualify for the EID.

The following rules pertaining to ISAs do not apply to this public housing program.

A qualified family paying income-based rent may choose an ISA instead of being given the EID. The MHA must advise the family that the ISA option is available. Families who choose the ISA will pay the higher rent and the MHA will deposit the difference between the higher rent and the EID rent in the savings account.

Amounts deposited to ISAs may only be withdrawn for the following reasons:

- Because the family is purchasing a home
- To pay education costs of family members
- Because the family is moving out of public or assisted housing
- To pay any other expenses the MHA authorizes to promote economic self-sufficiency

The MHA is required to maintain ISAs in interest bearing accounts, for which the family is credited with interest earned. The MHA may not charge the family a fee for maintaining the account.

At least once each year the MHA must provide the family with a statement of the balance in their account, including any interest earned, if required by state law.

MHA Policy

When applicable, the MHA will provide the family with a statement of the balance in their account, including any interest earned, annually and upon request when the family makes withdrawals from the account.

If the family moves out of public housing, the MHA must return the balance in the family's ISA, less any amounts the family owes the MHA.

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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" [HCV GB, p. 5-19].

MHA Policy

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

Business Expansion

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

MHA Policy

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

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Capital Indebtedness

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

MHA Policy

Capital indebtedness is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means the MHA 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 require the MHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

MHA Policy

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of a tenant family provided an up-front loan of $2,000 to help a business get started, the MHA 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

MHA Policy

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

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

Overview

There is no asset limitation for participation in the public housing program. However, HUD requires that the MHA 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 MHA 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 MHA policies related to each type of asset.

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

General Policies

Income from Assets

The MHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. As is true for all sources of income, HUD authorizes the MHA to use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected (2) it is not feasible to anticipate a level of income over 12 months or (3) the MHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income but the property is currently vacant, the MHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

> MHA Policy
>
> Any time 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 MHA to show why the asset income determination does not represent the family's anticipated asset income.

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Valuing Assets

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

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

> MHA Policy
>
> Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28 and PH Occ GB, p. 121].

Lump-Sum Receipts

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.)

Imputing Income from Assets [24 CFR 5.609(b)(3), Notice PIH 2012-29]

When net family assets are $5,000 or less, the MHA will include in annual income the actual income anticipated to be derived from the assets. When the family has net family assets in excess of $5,000, the MHA will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by an average passbook savings rate as determined by the MHA.

- Note: The HUD field office no longer provides an interest rate for imputed asset income. The "safe harbor" is now for the MHA to establish a passbook rate within 0.75 percent of a national average.
- The MHA must review its passbook rate annually to ensure that it remains within 0.75 percent of the national average.

> MHA Policy
>
> The MHA will initially set the imputed asset passbook rate at the national rate established by the Federal Deposit Insurance Corporation (FDIC).
>
> The MHA will review the passbook rate annually, in December of each year. The rate will not be adjusted unless the current MHA rate is no longer within 0.75 percent of the national rate. If it is no longer within 0.75 percent of the national rate, the passbook rate will be set at the current national rate.
>
> Changes to the passbook rate will take effect on February 1 following the December review.

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Determining Actual Anticipated Income from Assets

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

Withdrawal of Cash or Liquidation of Investments

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

Jointly Owned Assets

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

MHA Policy

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

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

HUD regulations require the MHA 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 MHA may set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

> MHA Policy
>
> The MHA 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 recertifications, the family may request an interim recertification to eliminate consideration of the asset(s).
>
> Assets placed by the family in nonrevocable 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.

> MHA Policy
>
> All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

Foreclosure or Bankruptcy

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

Family Declaration

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

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Types of Assets

Checking and Savings Accounts

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

MHA Policy

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

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

In determining the anticipated income from an interest-bearing checking or savings account, the MHA 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.

MHA Policy

In determining the market value of an investment account, the MHA 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 MHA will calculate asset income based on the earnings for the most recent reporting period.

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Equity in Real Property or Other Capital Investments

Equity (cash value) in a property or other capital asset is the estimated current market value of the asset 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 and PH, p. 121].

MHA Policy

In determining the equity, the MHA 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.

The MHA will first use the payoff amount for the loan (mortgage) as the unpaid balance to calculate equity. If the payoff amount is not available, the MHA will use the basic loan balance information to deduct from the market value in the equity calculation.

Equity in real property and other capital investments is considered in the calculation of asset income **except** for the following types of assets:

- Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]
- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-I.F.
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

The MHA must also deduct from the equity the reasonable costs for converting the asset to cash. Using the formula for calculating equity specified above, the net cash value of real property is the market value of the loan (mortgage) minus the expenses to convert to cash [Notice PIH 2012-3].

MHA Policy

For the purposes of calculating expenses to convert to cash for real property, the MHA will use ten percent of the market value of the home.

A family may have real property as an asset in two ways: (1) owning the property itself and (2) holding a mortgage or deed of trust on the property. In the case of a property owned by a family member, the anticipated asset income generally will be in the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero.

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In the case of a mortgage or deed of trust held by a family member, the outstanding balance (unpaid principal) is the cash value of the asset. The interest portion only of payments made to the family in accordance with the terms of the mortgage or deed of trust is counted as anticipated asset income.

MHA Policy

In the case of capital investments owned jointly with others not living in a family's unit, a prorated share of the property's cash value will be counted as an asset unless the MHA determines that the family receives no income from the property and is unable to sell or otherwise convert the asset to cash.

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.

Nonrevocable 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 MHA 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].

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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].

MHA Policy

In determining the value of personal property held as an investment, the MHA will use the family's estimate of the value. The MHA may obtain an appraisal 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)].

MHA Policy

Necessary personal property consists of only those items not held as an investment. It 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.

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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 annual income.

Periodic Payments Included in Annual Income

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

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

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income. Additionally, any deferred disability benefits that are received in a lump sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [24 CFR 5.609(c)(14)].

MHA Policy

When a delayed-start payment is received and reported during the period in which the MHA is processing an annual reexamination, the MHA will adjust the tenant rent retroactively for the period the payment was intended to cover. The family may pay in full any amount due or request to enter into a repayment agreement with the MHA.

See the chapter on reexaminations for information about a family's obligation to report lump-sum receipts between annual reexaminations.

Treatment of Overpayment Deductions from Social Security Benefits

The MHA must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, the MHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2018-24].

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Periodic Payments Excluded from Annual Income

- 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) [24 CFR 5.609(c)(2)]. Kinship care payments are considered equivalent to foster care payments and are also excluded from annual income [Notice PIH 2012-1].

  MHA Policy

  The MHA 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)].

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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)]. (See also the discussion of periodic payments in section 6-I.H and the discussion of lump-sum receipts in section 6-I.G.)

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6-I.J. WELFARE ASSISTANCE

Overview

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

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

The MHA 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 a public housing resident 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 MHA must include in annual income "imputed" welfare income. The MHA 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)].

For special procedures related to grievance hearings based upon the MHA's denial of a family's request to lower rent when the family experiences a welfare benefit reduction, see Chapter 14, Grievances and Appeals.

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)].

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

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

Alimony and Child Support

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

MHA Policy

The MHA will count court-awarded amounts for alimony and child support unless the MHA 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 MHA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with a tenant family [24 CFR 5.609(b)(7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

MHA Policy

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

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

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6-I.L. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

Other exclusions contained in 24 CFR 5.609(c) and updated by FR Notice 5/20/14 that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- The full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR 5.609(c)(6)].

  MHA Policy

  Regular financial support from parents or guardians to students for food, clothing personal items, and entertainment **is not** considered student financial assistance and is included **in** annual income.

- 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))

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(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)

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(u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, 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 shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109–249)

(v) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))

(w) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)

(x) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002

(y) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013–30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a))

(z) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations

(aa) Distributions from an ABLE account, and actual or imputed interest on the ABLE account balance

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PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

Overview

HUD regulations require MHAs 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 (MHA) 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 child care 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, Verifications.

Anticipating Expenses

MHA Policy

Generally, the MHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and nonschool periods and cyclical medical expenses), the MHA 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 MHA 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 MHA may require the family to provide documentation of payments made in the preceding year.

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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 cohead 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, cohead, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, cohead, or sole member is a person with disabilities [24 CFR 5.403].

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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 cohead 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."

MHA Policy

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.

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

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Families That Qualify for Both Medical and Disability Assistance Expenses

MHA Policy

This policy applies only to families in which the head, spouse, or cohead 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 MHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

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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.

MHA Policy

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family's request, the MHA 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 MHA determines that the disability assistance expenses enable more than one family member to work, the disability assistance expenses will be capped by the sum of the family members' incomes [PH Occ GB, p. 124].

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Eligible Disability Expenses

Examples of auxiliary apparatus are provided in the *PH Occupancy Guidebook* as follows: "Auxiliary apparatus: Including wheelchairs, walkers, scooters, reading devices for persons with visual disabilities, equipment added to cars and vans to permit their use by the family member with a disability, or service animals" [PH Occ GB, p. 124], 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 MHAs to further define and describe auxiliary apparatus [VG, p. 30].

Eligible Auxiliary Apparatus

MHA Policy

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

Eligible Attendant Care

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

MHA Policy

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

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

If the care attendant also provides other services to the family, the MHA 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.

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Payments to Family Members

No disability expenses may be deducted for payments to a member of a tenant family [23 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the tenant family may be deducted if they are 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.

MHA Policy

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

MHA Policy

This policy applies only to families in which the head, spouse, or cohead 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 MHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

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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."

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, child care expenses for foster children that are living in the assisted family's household are included when determining the family's child care expenses.

Qualifying for the Deduction

Determining Who Is Enabled to Pursue an Eligible Activity

MHA Policy

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

In evaluating the family's request, the MHA 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

MHA Policy

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 child care expense being allowed by the MHA.

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Furthering Education

MHA Policy

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

Being Gainfully Employed

MHA Policy

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

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Earned Income Limit on Child Care Expense Deduction

When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for child care – although the care must still be necessary and reasonable. However, when child care enables a family member to work, the deduction is capped by "the amount of employment income that is included in annual income" [24 CFR 5.603(b)].

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

When the person who is enabled to work is a person who receives the earned income disallowance (EID) or a full-time student whose earned income above $480 is excluded, child care 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 MHA must not limit the deduction to the least expensive type of child care. 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].

MHA Policy

When the child care 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 MHA generally will limit allowable child care 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.

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Eligible Child Care Expenses

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

Allowable Child Care Activities

MHA Policy

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

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

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

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

MHA Policy

Child care expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care 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 child care costs, the MHA will use the schedule of child care costs from the local welfare agency. Families may present, and the MHA will consider, justification for costs that exceed typical costs in the area.

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6-II.G. PERMISSIVE DEDUCTIONS [24 CFR 5.611(b)(1)]

Permissive deductions are additional, optional deductions that may be applied to annual income. As with mandatory deductions, permissive deductions must be based on need or family circumstance and deductions must be designed to encourage self-sufficiency or other economic purpose. If the MHA offers permissive deductions, they must be granted to all families that qualify for them and should complement existing income exclusions and deductions [PH Occ GB, p. 128].

The *Form HUD-50058 Instruction Booklet* states that the maximum allowable amount for total permissive deductions is less than $90,000 per year.

MHA Policy

The MHA has opted not to use permissive deductions.

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PART III: CALCULATING RENT

6-III.A. OVERVIEW OF INCOME-BASED RENT CALCULATIONS

The first step in calculating income-based rent is to determine each family's total tenant payment (TTP). Then, if the family is occupying a unit that has tenant-paid utilities, the utility allowance is subtracted from the TTP. The result of this calculation, if a positive number, is the tenant rent. If the TTP is less than the utility allowance, the result of this calculation is a negative number, and is called the utility reimbursement, which may be paid to the family or directly to the utility company by the MHA.

TTP Formula [24 CFR 5.628]

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

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

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

Welfare Rent [24 CFR 5.628]

MHA Policy

Welfare rent does not apply in this locality.

Minimum Rent [24 CFR 5.630]

MHA Policy

The minimum rent for this locality is $50.00.

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Optional Changes to Income-Based Rents [24 CFR 960.253(c)(2) and PH Occ GB, pp. 131-134]

MHAs have been given very broad flexibility to establish their own, unique rent calculation systems as long as the rent produced is not higher than that calculated using the TTP and mandatory deductions. At the discretion of the MHA, rent policies may structure a system that uses combinations of permissive deductions, escrow accounts, income-based rents, and the required flat and minimum rents.

The MHA's minimum rent and rent choice policies still apply to affected families. Utility allowances are applied to MHA designed income-based rents in the same manner as they are applied to the regulatory income-based rents.

The choices are limited only by the requirement that the method used not produce a TTP or tenant rent greater than the TTP or tenant rent produced under the regulatory formula.

MHA Policy

The MHA chooses not to adopt optional changes to income-based rents.

Ceiling Rents [24 CFR 960.253 (c)(2) and (d)]

Ceiling rents are used to cap income-based rents. They are part of the income-based formula. If the calculated TTP exceeds the ceiling rent for the unit, the ceiling rent is used to calculate tenant rent (ceiling rent/TTP minus utility allowance). Increases in income do not affect the family since the rent is capped. The use of ceiling rents fosters upward mobility and income mixing.

Because of the mandatory use of flat rents, the primary function of ceiling rents now is to assist families who cannot switch back to flat rent between annual reexaminations and would otherwise be paying an income-based tenant rent that is higher than the flat rent.

Ceiling rents must be set to the level required for flat rents (which will require the addition of the utility allowance to the flat rent for properties with tenant-paid utilities) [PH Occ GB, p. 135].

MHA Policy

The MHA chooses not to use ceiling rents.

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Utility Reimbursement [24 CFR 960.253(c)(4)]

Utility reimbursement occurs when any applicable utility allowance for tenant-paid utilities exceeds the TTP. HUD permits the MHA to pay the reimbursement to the family or directly to the utility provider.

MHA Policy

The MHA will make utility reimbursements to the family.

The MHA may make all utility reimbursement payments to qualifying families on a monthly basis or may make quarterly payments when the monthly reimbursement amount is $15.00 or less. Reimbursements must be made once per calendar-year quarter, either prospectively or retroactively, and must be prorated if the family leaves the program in advance of its next quarterly reimbursement. The MHA must also adopt hardship policies for families for whom receiving quarterly reimbursement would create a financial hardship. The MHA must issue reimbursements that exceed $15.00 per month on a monthly basis.

MHA Policy

The MHA will issue all utility reimbursements monthly.

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

MHA Policy

The financial hardship rules described below do not apply in this jurisdiction because the MHA has established a minimum rent of $0.

Overview

If the MHA establishes a minimum rent greater than zero, the MHA 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 MHA determines that a hardship exists, the TTP 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.

MHA Policy

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

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

(2) The family would be evicted because it is unable to pay the minimum rent.

MHA Policy

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent or tenant-paid utilities.

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

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(4) A death has occurred in the family.

MHA Policy

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 MHA.

MHA Policy

The MHA has not established any additional hardship criteria.

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Implementation of Hardship Exemption

Determination of Hardship

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

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

MHA Policy

The MHA 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.

The MHA may not evict the family for nonpayment of minimum rent during the 90-day period beginning the month following the family's request for a hardship exemption.

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

Example: Impact of Minimum Rent Exemption Assume the MHA has established a minimum rent of $35.	
TTP – No Hardship	**TTP – With Hardship**
$0 30% of monthly adjusted income $15 10% of monthly gross income N/A Welfare rent $35 Minimum rent	$0 30% of monthly adjusted income $15 10% of monthly gross income N/A Welfare rent $35 Minimum rent
Minimum rent applies. TTP = $35	Hardship exemption granted. TTP = $15

MHA Policy

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 MHA will make the determination of hardship within 30 calendar days.

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No Financial Hardship

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

For procedures pertaining to grievance hearing requests based upon the MHA's denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

MHA Policy

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

Temporary Hardship

If the MHA determines that a qualifying financial hardship is temporary, the MHA must reinstate the minimum rent from the beginning of the first of the month following the date of the family's request for a hardship exemption.

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

For procedures pertaining to grievance hearing requests based upon the MHA's denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

MHA Policy

The MHA will enter into a repayment agreement in accordance with the MHA's repayment agreement policy (see Chapter 16).

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Long-Term Hardship

If the MHA determines that the financial hardship is long-term, the MHA 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.

MHA Policy

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

(1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.

(2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a $60/month child support payment, the hardship will continue to exist until the family receives at least $60/month in income from another source or once again begins to receive the child support.

(3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

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6-III.C. UTILITY ALLOWANCES [24 CFR 965, Subpart E]

Overview

Utility allowances are provided to families paying income-based rents when the cost of utilities is not included in the rent. When determining a family's income-based rent, the MHA must use the utility allowance applicable to the type of dwelling unit leased by the family.

For policies on establishing and updating utility allowances, see Chapter 16.

Reasonable Accommodation [24 CFR 8]

On request from a family, MHAs must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family with a disability [PH Occ GB, p. 172].

Residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172].

See Chapter 2 for policies related to reasonable accommodations.

Utility Allowance Revisions [24 CFR 965.507]

The MHA must review its schedule of utility allowances each year. Between annual reviews, the MHA must revise the utility allowance schedule if there is a rate change that by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which such allowances were based. Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective [PH Occ GB, p. 171].

The tenant rent calculations must reflect any changes in the MHA's utility allowance schedule [24 CFR 960.253(c)(3)].

> MHA Policy
>
> Unless the MHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted.

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6-III.D. PRORATED RENT 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 MHA must prorate the assistance provided to a mixed family. The MHA will first determine TTP as if all family members were eligible and then prorate the rent based upon the number of family members that actually are eligible. To do this, the MHA must:

(1) Subtract the TTP from the flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible.

(2) Divide the family maximum subsidy by the number of persons in the family to determine the maximum subsidy per each family member who is eligible (member maximum subsidy).

(3) Multiply the member maximum subsidy by the number of eligible family members.

(4) Subtract the subsidy calculated in the last step from the flat rent. This is the prorated TTP.

(5) Subtract the utility allowance for the unit from the prorated TTP. This is the prorated rent for the mixed family.

MHA Policy

Revised public housing flat rents will be applied to a mixed family's rent calculation at the first annual reexamination after the revision is adopted.

(6) When the mixed family's TTP is greater than the applicable flat rent, use the TTP as the prorated TTP. The prorated TTP minus the utility allowance is the prorated rent for the mixed family.

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6-III.E. FLAT RENTS AND FAMILY CHOICE IN RENTS [24 CFR 960.253]

Flat Rents [24 CFR 960.253(b)]

The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

Changes in family income, expenses, or composition will not affect the flat rent amount because it is outside the income-based formula.

Policies related to the reexamination of families paying flat rent are contained in Chapter 9, and policies related to the establishment and review of flat rents are contained in Chapter 16.

Family Choice in Rents [24 CFR 960.253(a) and (e)]

Once each year, the MHA must offer families the choice between a flat rent and an income-based rent. The family may not be offered this choice more than once a year. The MHA must document that flat rents were offered to families under the methods used to determine flat rents for the MHA.

> MHA Policy
>
> The annual MHA offer to a family of the choice between flat and income-based rent will be conducted upon admission and upon each subsequent annual reexamination.
>
> The MHA will require families to submit their choice of flat or income-based rent in writing and will maintain such requests in the tenant file as part of the admission or annual reexamination process.

The MHA must provide sufficient information for families to make an informed choice. This information must include the MHA's policy on switching from flat rent to income-based rent due to financial hardship and the dollar amount of the rent under each option. However, if the family chose the flat rent for the previous year the MHA is required to provide an income-based rent amount only in the year that a reexamination of income is conducted or if the family specifically requests it and submits updated income information.

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Switching from Flat Rent to Income-Based Rent Due to Hardship [24 CFR 960.253(f)]

A family can opt to switch from flat rent to income-based rent at any time if they are unable to pay the flat rent due to financial hardship. If the MHA determines that a financial hardship exists, the MHA must immediately allow the family to switch from flat rent to the income-based rent.

MHA Policy

Upon determination by the MHA that a financial hardship exists, the MHA will allow a family to switch from flat rent to income-based rent effective the first of the month following the family's request.

Reasons for financial hardship include:

- The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance
- The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items
- Such other situations determined by the MHA to be appropriate

MHA Policy

The MHA considers payment of flat rent to be a financial hardship whenever the switch to income-based rent would be lower than the flat rent [PH Occ GB, p. 137].

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Phasing In Flat Rents [Notice PIH 2017-23; 24 CFR 960.253(b)]

When new flat rents requirements were implemented in 2014, HUD limited the increase for existing residents paying flat rent at that time to no more than 35 percent of the current tenant rent per year. In some cases, this meant that some residents had or will have their flat rents Phased-in at the time of their annual recertification. To do this, MHAs conduct a flat rent impact analysis to determine whether a Phase-in is or was necessary. For families whose flat rent is being Phased-in, the MHA must multiply the family's current rent amount by 1.35 and compare the result to the flat rent under the MHA's policies. Families who have subsequently been admitted to the program or have subsequently selected flat rent will not experience a Phase-in.

Notice PIH 2017-23 requires that flat rents must be Phased in at the full 35 percent per year. MHAs do not have the option of Phasing in flat rent increases at less than 35 percent per year.

Example: A family was paying a flat rent of $500 per month. At their annual recertification, the MHA has increased the flat rent for their unit size to comply with the new requirements to $700. The MHA conducted a flat rent impact analysis as follows:

$500 x 1.35 = $675

Since the MHA's increased flat rent of $700 resulted in a rent increase of more than 35 percent, the MHA offered the family the choice to pay either $675 per month or an income-based rent. The flat rent increase was Phased in. At their next annual recertification in November 2015, the MHA will again multiply the family's current flat rent by 1.35 and compare the results to the MHA's current flat rent.

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Flat Rents and Earned Income Disallowance [A&O FAQs]

Because the EID is a function of income-based rents, a family paying flat rent cannot qualify for the EID even if a family member experiences an event that would qualify the family for the EID. If the family later chooses to pay income-based rent, they would only qualify for the EID if a new qualifying event occurred.

Under the EID original calculation method, a family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their exclusion period would have the exclusion period continue while paying flat rent as long as the employment that is the subject of the exclusion continues. A family paying flat rent could therefore see a family member's exclusion period expire while the family is paying flat rent.

Under the EID revised calculation method, a family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their exclusion period would have the exclusion period continue while paying flat rent regardless whether the employment that is the subject of the exclusion continues. A family paying flat rent could therefore see a family member's exclusion period expire while the family is paying flat rent.

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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[1]; and

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

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[1] Text of 45 CFR 260.31 follows (next page).

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(i) 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.

HHS DEFINITION OF "ASSISTANCE"

45 CFR: General Temporary Assistance for Needy Families

260.31 What does the term "assistance" mean?

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

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

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

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

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and 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

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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 MHA 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 MHA'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.

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(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 MHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]

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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, MHAs 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.

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EXHIBIT 6-4: EARNED INCOME DISALLOWANCE

24 CFR 960.255 Self-sufficiency incentive–Disallowance of increase in annual income.

(a) *Definitions*. The following definitions apply for purposes of this section.

Baseline income. The annual income immediately prior to implementation of the disallowance described in paragraph (c)(1) of this section of a person who is a member of a qualified family.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in public housing:

(i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;

(ii) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or

(iii) Whose annual income increases, as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the MHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least $500.

(b) *Disallowance of increase in annual income*.

(1) *Initial twelve month exclusion*. During the 12-month period beginning on the date on which a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the MHA must exclude from the annual income (as defined in § 5.609 of this title) of a qualified family any increase in the income of the family member as a result of employment over the baseline income of that family member.

(2) *Phase-in of rent increase.* Upon the expiration of the 12-month period defined in paragraph (b)(1) of this section and for the subsequent 12-month period, the MHA must exclude from the annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.

(3) *Maximum 2-year disallowance.* The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 24-month period. It applies for a maximum of 12 months for disallowance under paragraph (b)(1) of this section and a maximum of 12 months for disallowance under paragraph (b)(2) of this section, during the 24-month period starting from the initial exclusion under paragraph (b)(1) of this section.

(4) Effect of changes on currently participating families. Families eligible for and participating in the disallowance of earned income under this section prior to May 9, 2016 will continue to be governed by this section in effect as it existed immediately prior to that date.

(c) *Inapplicability to admission*. The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).

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(d) *Individual Savings Accounts*. As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a MHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:

(1) The MHA must advise the family that the savings account option is available;

(2) At the option of the family, the MHA must deposit in the savings account the total amount that would have been included in tenant rent payable to the MHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;

(3) Amounts deposited in a savings account may be withdrawn only for the purpose of:

(i) Purchasing a home;

(ii) Paying education costs of family members;

(iii) Moving out of public or assisted housing; or

(iv) Paying any other expense authorized by the MHA for the purpose of promoting the economic self-sufficiency of residents of public housing;

(4) The MHA must maintain the account in an interest bearing investment and must credit the family with the net interest income, and the MHA may not charge a fee for maintaining the account;

(5) At least annually the MHA must provide the family with a report on the status of the account; and

(6) If the family moves out of public housing, the MHA shall pay the tenant any balance in the account, minus any amounts owed to the MHA

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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 MHA 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 MHA, the welfare agency will inform the MHA 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 MHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The MHA 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 MHA'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 MHA by the welfare agency).

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(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 MHA 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 MHA decision.*

(1) Public housing. If a public housing tenant claims that the MHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the MHA denies the family's request to modify such amount, the MHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the MHA determination of the amount of imputed welfare income. The MHA notice shall also state that if the tenant does not agree with the MHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the MHA 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 MHA 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 MHA 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 MHA denies the family's request to modify such amount, the MHA shall give the family written notice of such denial, with a brief explanation of the basis for the MHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the MHA determination, the family may request an informal hearing on the determination under the MHA hearing procedure.

(e) *MHA relation with welfare agency.*

(1) The MHA must ask welfare agencies to inform the MHA 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 MHA 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 MHA 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 MHA. However, the MHA 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 MHA shall be entitled to rely on the welfare agency notice to the MHA of the welfare agency's determination of a specified welfare benefits reduction.

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Chapter 7

VERIFICATION

[24 CFR 960.259, 24 CFR 5.230, Notice PIH 2018-18]

INTRODUCTION

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

The MHA will follow the verification guidance provided by HUD in Notice PIH 2018-18 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary MHA policies.

Part I describes the general verification process. Part II provides more detailed requirements related to family information. Part III provides information on income and assets, and Part IV covers mandatory deductions.

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies established by the MHA.

PART I: GENERAL VERIFICATION REQUIREMENTS

7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 960.259, 24 CFR 5.230]

The family must supply any information that the MHA or HUD determines is necessary to the administration of the program and must consent to MHA verification of that information [24 CFR 960.259(a)(1)].

Consent Forms

It is required that all adult applicants and tenants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the MHA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

Penalties for Failing to Consent [24 CFR 5.232]

If any family member who is required to sign a consent form fails to do so, the MHA will deny admission to applicants and terminate the lease of tenants. The family may request a hearing in accordance with the MHA's grievance procedures.

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7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

HUD's Verification Hierarchy [Notice PIH 2018-18]

HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general, HUD requires the MHA to use the most reliable form of verification that is available and to document the reasons when the MHA uses a lesser form of verification.

In order of priority, the forms of verification that the MHA will use 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 (may be provided by applicant or resident)
- Written Third-party Verification Form
- Oral Third-party Verification
- Self-Certification

Each of the verification methods is discussed in subsequent sections below.

Requirements for Acceptable Documents

MHA Policy

Any documents used for verification must be the original (not photocopies) and generally must be dated within 60 days of the MHA request. The documents must not be damaged, altered or in any way illegible.

Printouts from web pages are considered original documents.

The MHA staff member who views the original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.

Any family self-certifications must be made in a format acceptable to the MHA and must be signed in the presence of a MHA representative or MHA notary public.

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File Documentation

The MHA 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 MHA has followed all of the verification policies set forth in this ACOP. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

MHA Policy

The MHA 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 or income-based rent determination

When the MHA is unable to obtain third-party verification, the MHA will document in the family file the reason that third-party verification was not available [24 CFR 960.259(c)(1); Notice PIH 2018-18].

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7-I.C. UP-FRONT INCOME VERIFICATION (UIV)

Up-front income verification (UIV) refers to the MHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to the MHA.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until the MHA has independently verified the UIV information and the family has been granted the opportunity to contest any adverse findings through the MHA's informal review/hearing processes. (For more on UIV and income projection, see section 6-I.C.)

Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory)

MHAs must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income in accordance with 24 CFR 5.236 and administrative guidance issued by HUD. HUD's 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

The data shown on income and income validation tool (IVT) reports is updated quarterly. Data may be between three and six months old at the time reports are generated.

MHA Policy

The MHA 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 and IVT 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 resident files with the applicable annual or interim reexamination documents.

When the MHA determines through EIV 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 15, Program Integrity.

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EIV Identity Verification

The EIV system verifies resident identities against Social Security Administration (SSA) records. These records are compared to Public and Indian Housing Information Center (PIC) data for a match on social security number, name, and date of birth.

MHAs are required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2018-18].

When identity verification for a resident fails, a message will be displayed within the EIV system and no income information will be displayed.

MHA Policy

The MHA will identify residents whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis. The MHA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the tenant. When the MHA determines that discrepancies exist as a result of MHA errors, such as spelling errors or incorrect birth dates, it will correct the errors promptly.

Upfront Income Verification Using Non-HUD Systems (Optional)

In addition to mandatory use of the EIV system, HUD encourages MHAs to utilize other upfront verification sources.

MHA Policy

The MHA will inform all applicants and residents of its use of the following UIV resources during the admission and reexamination process:

HUD's EIV system

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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 MHA by the family. If written third-party verification is not available, the MHA 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 2018-18]

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 MHA is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.

The MHA 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.

> MHA Policy
>
> Third-party documents provided by the family must be dated within 60 days of the MHA request date.
>
> If the MHA determines that third-party documents provided by the family are not acceptable, the MHA will explain the reason to the family and request additional documentation.
>
> As verification of earned income, the MHA will require the family to provide the two most current, consecutive pay stubs.

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Written Third-Party Verification Form

When upfront verification is not available and the family is unable to provide written third-party documents, the MHA must request a written third-party verification form. HUD's position is that this traditional third-party verification method presents administrative burdens and risks which may be reduced through the use of family-provided third-party documents.

MHAs may mail, fax, or email third-party written verification form requests to third-party sources.

> MHA Policy
>
> The MHA 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 MHA.

Oral Third-Party Verification [Notice PIH 2018-18]

For third-party oral verification, MHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Oral third-party verification is mandatory if neither form of written third-party verification is available.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

MHAs should document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

> MHA Policy
>
> In collecting third-party oral verification, MHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.
>
> When any source responds verbally to the initial written request for verification the MHA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

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When Third-Party Verification is Not Required [Notice PIH 2018-18]

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.

MHA Policy

If the family cannot provide original documents, the MHA 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 [VG, p. 18].

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

The MHA may accept a self-certification from the family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

MHA Policy

The MHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

Value of Assets and Asset Income [24 CFR 960.259]

For families with net assets totaling $5,000 or less, the MHA may accept the family's declaration of asset value and anticipated asset income. However, the MHA is required to obtain third-party verification of all assets regardless of the amount during the intake process, whenever a family member is added, and at least every three years thereafter.

MHA Policy

For families with net assets totaling $5,000 or less, the MHA 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 MHA 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.

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7-I.E. SELF-CERTIFICATION

When HUD requires third-party verification, self-certification, or "tenant declaration," is used as a last resort when the MHA is unable to obtain third-party verification.

Self-certification, however, is an acceptable form of verification when:

- A source of income is fully excluded
- Net family assets total $5,000 or less and the MHA has adopted a policy to accept self certification at annual recertification, when applicable
- The MHA has adopted a policy to implement streamlined annual recertifications for fixed sources of income (See Chapter 9)

When the MHA was required to obtain third-party verification but instead relies on a tenant declaration for verification of income, assets, or expenses, the family's file must be documented to explain why third-party verification was not available.

MHA Policy

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the MHA.

The MHA 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 the MHA 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 MHA representative or MHA notary public.

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PART II: VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

MHA Policy

The MHA will require families to furnish verification of legal identity for each household member.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Certificate of birth, naturalization papers Church issued baptismal certificate Current, valid driver's license or Department of Motor Vehicle identification card U.S. military discharge (DD 214) Current U.S. passport Current employer identification card	Certificate of birth Adoption papers Custody agreement Health and Human Services ID 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.

If none of these documents can be provided and at the MHA's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to the MHA and be signed in the presence of a MHA representative or MHA notary public.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where the MHA has reason to doubt the identity of a person representing him or herself to be a tenant or a member of a tenant family.

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7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and Notice PIH 2018-24]

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 residents who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

The MHA must accept the following documentation as acceptable evidence of the social security number:

- An original SSN card issued by the Social Security Administration (SSA)
- An original SSA-issued document, which contains the name and SSN of the individual
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

The MHA may only reject documentation of an SSN provided by an applicant or resident if the document is not an original document, if the original document has been altered, mutilated, is illegible, or if the document appears to be forged.

MHA Policy

The MHA will explain to the applicant or resident the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the MHA within 90 days.

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 program admission, an otherwise eligible family may be admitted and must provide documentation of the child's SSN within 90 days. A 90-day extension will be granted if the MHA determines that the resident's failure to comply was due to unforeseen circumstances and was outside of the resident's control.

MHA Policy

The MHA 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 resident 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 resident 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 MHA may not add the new household member until such documentation is provided.

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When a resident requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the resident 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 MHA determines that the resident's failure to comply was due to unforeseen circumstances and was outside of the resident's control. During the period the MHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

MHA Policy

The MHA will grant one additional 90-day extension if needed for reasons beyond the resident'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.

MHA Policy

The MHA will verify each disclosed SSN by:

Obtaining documentation from applicants and residents 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 MHA 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.

MHA Policy

Once an individual's status is classified as "verified" in HUD's EIV system, the MHA will remove and destroy copies of documentation accepted as evidence of social security numbers.

7-II.C. DOCUMENTATION OF AGE

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

MHA Policy

If an official record of birth or evidence of social security retirement benefits cannot be provided, the MHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

Age must be verified only once during continuously-assisted occupancy.

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7-II.D. FAMILY RELATIONSHIPS

Applicants and tenants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

MHA Policy

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

Marriage

MHA Policy

Certification by the head of household is normally sufficient verification. If the MHA has reasonable doubts about a marital relationship, the MHA will require the family to document the marriage with a marriage certificate or other documentation to verify that the 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

MHA Policy

Certification by the head of household is normally sufficient verification. If the MHA has reasonable doubts about a divorce or separation, the MHA will require the family to provide documentation of the divorce or separation with a certified copy of a divorce decree, signed by a court officer; a copy of a court-ordered maintenance or other court record; or other documentation that shows a couple is divorced or separated.

If no court document is available, documentation from a community-based agency will be accepted.

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Absence of Adult Member

MHA Policy

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support 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

MHA Policy

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

MHA Policy

The MHA 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 claims full-time student status for an adult other than the head, spouse, or cohead, or

The family claims a child care deduction to enable a family member to further his or her education.

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7-II.F. DOCUMENTATION OF DISABILITY

The MHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The MHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The MHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the MHA receives a verification document that provides such information, the MHA will not place this information in the tenant file. Under no circumstances will the MHA request a resident's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' Web site at www.os.dhhs.gov.

The MHA may make the following inquiries, provided it makes them of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiry about whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiry about whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

Family Members Receiving SSA Disability Benefits

Verification of receipt of disability benefits from the Social Security Administration (SSA) is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions [VG, p. 23].

MHA Policy

For family members claiming disability who receive disability payments from the SSA, the MHA will attempt to obtain information about disability benefits through HUD's Enterprise Income Verification (EIV) system. If documentation is not available through HUD's EIV system, the MHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If a family member is unable to provide the document, the MHA will ask the family to obtain a benefit verification letter either by calling SSA at 1-800-772-1213 or by requesting one from www.ssa.gov. Once the family receives the benefit verification letter, it will be required to provide the letter to the MHA.

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Family Members Not Receiving SSA Disability Benefits

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.403, necessary to qualify for waiting list preferences or certain income disallowances and deductions.

MHA Policy

For family members claiming disability who do not receive SSI or other disability payments 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 [24 CFR 5.508]

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. See the Eligibility chapter for detailed discussion of eligibility requirements. This chapter (7) discusses HUD and MHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy [24 CFR 5.508(g)(5)]

U.S. Citizens and Nationals

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The MHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

MHA Policy

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

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Eligible Immigrants

Documents Required

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

MHA Verification [HCV GB, pp 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this ACOP. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the MHA must verify immigration status with the U.S. Citizenship and Immigration Services (USCIS).

The MHA will follow all USCIS protocols for verification of eligible immigration status.

7-II.H. VERIFICATION OF PREFERENCE STATUS

The MHA must verify any preferences claimed by an applicant that determined his or her placement on the waiting list.

MHA Policy

The MHA offers a preference for working families, described in Section 4-III.B.

The MHA may verify that the family qualifies for the working family preference based on the family's submission of the working member's most recent paycheck stub indicating that the working member works at least 20 hours per week. The paycheck stub must have been issued to the working member within the last thirty days.

The MHA may also seek third party verification from the employer of the head, spouse, cohead or sole member of a family requesting a preference as a working family.

The MHA also offers a preference for victims of domestic violence, dating violence, sexual assault, or stalking, as described in Section 4-III.B. To verify that applicants qualify for the preference, the MHA will follow documentation requirements outlined in Section 16-VII.D.

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PART III: VERIFYING INCOME AND ASSETS

Chapter 6, Part I of this ACOP describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides MHA policies that supplement the general verification procedures specified in Part I of this chapter.

7-III.A. EARNED INCOME

Tips

MHA Policy

Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

Wages

MHA Policy

For wages other than tips, the family must provide originals of the two most current, consecutive pay stubs.

7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME

MHA Policy

Business owners and self-employed persons will be required to provide:

An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.

All schedules completed for filing federal and local taxes in the preceding year.

If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

The MHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination the MHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, the MHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months the MHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

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7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 9.

Social Security/SSI Benefits

MHA Policy

To verify the SS/SSI benefits of applicants, the MHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member who receives social security benefits. If a family member is unable to provide the document, the MHA will help the applicant request a benefit verification letter from SSA's Web site at www.socialsecurity.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once the family has received the original benefit verification letter, it will be required to provide the letter to the MHA.

To verify the SS/SSI benefits of residents, the MHA will obtain information about social security/SSI benefits through HUD's EIV system, and confirm with the resident(s) that the current listed benefit amount is correct. If the resident disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, the MHA will request a current SSA benefit verification letter from each family member that receives social security benefits. If a family member is unable to provide the document, the MHA will help the resident request a benefit verification letter from SSA's Web site at www.socialsecurity.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once the family has received the benefit verification letter, it will be required to provide the letter to the MHA.

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7-III.D. ALIMONY OR CHILD SUPPORT

MHA Policy

The methods the MHA will use to verify alimony and child support payments differ depending on whether the family declares that it receives regular payments.

If the family declares that it ***receives regular payments***, verification will be obtained in the following order of priority:

Copies of the receipts and/or payment stubs for the 60 days prior to MHA 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

If the family declares that it ***receives irregular or no payments***, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts

If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

Note: Families are not required to undertake independent enforcement action.

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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. The MHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

MHA Policy

The MHA will verify the value of assets disposed of only if:

The MHA does not already have a reasonable estimation of its value from previously collected information, or

The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly resident reported a $10,000 certificate of deposit at the last annual reexamination and the MHA verified this amount. Now the person reports that she has given this $10,000 to her son. The MHA has a reasonable estimate of the value of the asset; therefore, reverification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately 5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the MHA will verify the value of this asset.

7-III.F. NET INCOME FROM RENTAL PROPERTY

MHA Policy

The family must provide:

A current executed lease for the property that shows the rental amount or certification from the current tenant

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 MHA 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.

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7-III.G. RETIREMENT ACCOUNTS

MHA Policy

The MHA 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, the MHA will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

Upon retirement, the MHA 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 MHA 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.

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7-III.H. INCOME FROM EXCLUDED SOURCES

A detailed discussion of excluded income is provided in Chapter 6, Part I.

HUD guidance on verification of excluded income draws a distinction between income which is fully excluded and income which is only partially excluded.

For fully excluded income, the MHA is **not** required to follow the verification hierarchy, document why third-party verification is not available, or report the income on the 50058. Fully excluded income is defined as income that is entirely excluded from the annual income determination (for example, food stamps, earned income of a minor, or foster care funds) [Notice PIH 2013-04].

MHAs may accept a family's signed application or reexamination form as self-certification of fully excluded income. They do not have to require additional documentation. However, if there is any doubt that a source of income qualifies for full exclusion, MHAs have the option of requiring additional verification.

For partially excluded income, the MHA **is** required to follow the verification hierarchy and all applicable regulations, and to report the income on the 50058. Partially excluded income is defined as income where only a certain portion of what is reported by the family qualifies to be excluded and the remainder is included in annual income (for example, the income of an adult full-time student, or income excluded under the earned income disallowance).

MHA Policy

The MHA will accept the family's self-certification as verification of fully excluded income. The MHA may request additional documentation if necessary to document the income source.

The MHA will verify the source and amount of partially excluded income as described in Part 1 of this chapter.

7-III.I. ZERO ANNUAL INCOME STATUS

MHA Policy

The MHA will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, earned income, etc. are not being received by families claiming to have zero annual income.

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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 MHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

Dependent Deduction

See Chapter 6 (6-II.B.) for a full discussion of this deduction. The MHA will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse or cohead of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full-time student

Elderly/Disabled Family Deduction

See the Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. The MHA will verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.

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7-IV.B. MEDICAL EXPENSE DEDUCTION

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

MHA Policy

Medical expenses will be verified through:

Written third-party documents provided by the family, such as Pharmacy printouts or receipts.

The MHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The MHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

Written third-party verification forms, if the family is unable to provide acceptable documentation.

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, the MHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

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Eligible Household

The medical expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62 or a person with disabilities. The MHA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter, and as described in Chapter 7 (7-IV.A) of this plan.

Qualified Expenses

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for the MHA's policy on what counts as a medical expense.

Unreimbursed Expenses

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

MHA Policy

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

MHA Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, the MHA 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

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7-IV.C. DISABILITY ASSISTANCE EXPENSES

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

Attendant Care

MHA Policy

The MHA will accept written third-party documents provided by the family.

If family-provided documents are not available, the MHA 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

MHA Policy

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 MHA 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 MHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

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Family Member(s) Permitted to Work

The MHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

MHA Policy

The MHA 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.). This documentation may be provided by the family.

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

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

MHA Policy

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

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7-IV.D. CHILD CARE EXPENSES

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I. In addition, the MHA must verify that:

- The child is eligible for care (12 or younger).
- The costs claimed are not reimbursed.
- The costs enable a family member to work, actively seek work, or further their education.
- The costs are for an allowable type of child care.
- The costs are reasonable.

Eligible Child

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. The MHA will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

Unreimbursed Expense

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

MHA Policy

The family and the care provider will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

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Pursuing an Eligible Activity

The MHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

MHA Policy

Information to be Gathered

The MHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work

Whenever possible the MHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the MHA will request family-provided verification from the agency of the member's job seeking efforts to date and require the family to submit to the MHA any reports provided to the other agency.

In the event third-party verification is not available, the MHA will provide the family with a form on which the family member must record job search efforts. The MHA will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education

The MHA will request third-party documentation to verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

Gainful Employment

The MHA will seek third-party verification of the work schedule of the person who is permitted to work by the child care. 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 documentation may be provided by the family.

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Allowable Type of Child Care

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

MHA Policy

The MHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

The MHA 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).

The MHA will verify that the child care 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 child care costs can be deducted.

MHA Policy

The actual costs the family incurs will be compared with the MHA's established 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 MHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

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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 MHA.
- 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*

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Chapter 8

LEASING AND INSPECTIONS

[24 CFR 5, Subpart G; 24 CFR 966, Subpart A]

INTRODUCTION

Public housing leases are the contractual basis of the legal relationship between the MHA and the tenant. All units must be occupied pursuant to a dwelling lease agreement that complies with HUD regulations.

HUD regulations require the MHA to inspect each dwelling unit prior to move-in, at move-out, and annually during the period of occupancy. In addition, the MHA may conduct additional inspections in accordance with MHA policy.

This chapter is divided into two parts as follows:

> Part I: Leasing. This part describes pre-leasing activities and the MHA's policies pertaining to lease execution, lease modification, and payments under the lease.
>
> Part II: Inspections. This part describes the MHA's policies for inspecting dwelling units.

PART I: LEASING

8-I.A. OVERVIEW

An eligible family may occupy a public housing dwelling unit under the terms of a lease. The lease must meet all regulatory requirements, and must also comply with applicable state and local laws and codes.

The term of the lease must be for a period of 12 months. The lease must be renewed automatically for another 12-month term, except that the MHA may not renew the lease if the family has violated the community service requirement [24 CFR 966.4(a)(2)].

MHAs must adopt smoke-free policies, which must be implemented no later than July 30, 2018. The policy is attached as Exhibit 8-1.

MHAs must include in the ACOP residential minimum heating standards policies [Notice PIH 2018-19]. The policy is included in Part I of this chapter.

Part I of this chapter contains regulatory information on leasing, where applicable, as well as the MHA's leasing policies.

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8-I.B. LEASE ORIENTATION

MHA Policy

After unit acceptance but prior to occupancy, a MHA representative will conduct a lease orientation with the family. The head of household or spouse is required to attend.

Orientation Agenda

MHA Policy

When families attend the lease orientation, they will be provided with:

- A copy of the lease
- A copy of the MHA's grievance procedure
- A copy of the house rules
- A copy of the MHA's schedule of maintenance charges
- 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
- 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
- A copy of the form HUD-5380, VAWA Notice of Occupancy Rights
- A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
- A copy of the MHA's smoke free policy
- A notice that includes the procedures for requesting relief and the MHA's criteria for granting requests for relief for excess utility surcharges

Topics to be discussed and explained to all families include:

- Applicable deposits and all other charges
- Review and explanation of lease provisions
- Unit maintenance requests and work orders
- The MHA's interim reporting requirements
- Review and explanation of occupancy forms
- Community service requirements
- Family choice of rent
- VAWA protections
- Smoke-free policies

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8-I.C. EXECUTION OF LEASE

The lease must be executed by the tenant and the MHA, except for automatic renewals of a lease [24 CFR 966.4(a)(3)].

A lease is executed at the time of admission for all new residents. A new lease is also executed at the time of transfer from one MHA unit to another.

The lease must state the composition of the household as approved by the MHA (family members and any MHA-approved live-in aide) [24 CFR 966.4(a)(1)(v)]. See Section 8-I.D. for policies regarding changes in family composition during the lease term.

MHA Policy

The head of household, spouse or cohead, and all other adult members of the household will be required to sign the public housing lease prior to admission. An appointment will be scheduled for the parties to execute the lease. The head of household will be provided a copy of the executed lease and the MHA will retain a copy in the resident's file.

Files for households that include a live-in aide will contain file documentation signed by the live-in aide, that the live-in aide is not a party to the lease and is not entitled to MHA assistance. The live-in aide is only approved to live in the unit while serving as the care attendant for the family member who requires the care.

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8-I.D. MODIFICATIONS TO THE LEASE

The lease may be modified at any time by written agreement of the tenant and the MHA [24 CFR 966.4(a)(3)].

Modifications to the Lease Form

The MHA may modify its lease from time to time. However, the MHA must give residents at least thirty (30) days advance notice of the proposed changes and an opportunity to comment on the changes. The MHA must also consider any comments before formally adopting a new lease [24 CFR 966.3].

After proposed changes have been incorporated into the lease and approved by the Board, each family must be notified at least 60 days in advance of the effective date of the new lease or lease revision. A resident's refusal to accept permissible and reasonable lease modifications that are made in accordance with HUD requirements, or are required by HUD, is grounds for termination of tenancy [24 CFR 966.4(l)(2)(iii)(E)].

> MHA Policy
>
> The family will have 30 days to accept the revised lease. If the family does not accept the offer of the revised lease within that 30 day timeframe, the family's tenancy will be terminated for other good cause in accordance with the policies in Chapter 13.

Schedules of special charges and rules and regulations are subject to modification or revision. Because these schedules are incorporated into the lease by reference, residents and resident organizations must be provided at least thirty days written notice of the reason(s) for any proposed modifications or revisions, and must be given an opportunity to present written comments. The notice must be delivered directly or mailed to each tenant; or posted in at least three conspicuous places within each structure or building in which the affected dwelling units are located, as well as in a conspicuous place at the project office, if any, or if none, a similar central business location within the project. Comments must be taken into consideration before any proposed modifications or revisions become effective [24 CFR 966.5].

After the proposed revisions become effective they must be publicly posted in a conspicuous manner in the project office and must be furnished to applicants and tenants on request [24 CFR 966.5].

> MHA Policy
>
> When the MHA proposes to modify or revise schedules of special charges or rules and regulations, the MHA will post a copy of the notice in the central office, and will mail a copy of the notice to each resident family. Documentation of proper notice will be included in each resident file.

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Other Modifications

MHA Policy

The lease will be amended to reflect all changes in family composition.

If, for any reason, any member of the household ceases to reside in the unit, the lease will be amended by drawing a line through the person's name. The head of household and MHA will be required to initial and date the change.

If a new household member is approved by the MHA to reside in the unit, the person's name and birth date will be added to the lease. The head of household and MHA will be required to initial and date the change. If the new member of the household is an adult, s/he will also be required to sign and date the lease.

Policies governing when and how changes in family composition must be reported are contained in Chapter 9, Reexaminations.

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8-I.E. SECURITY DEPOSITS [24 CFR 966.4(b)(5)]

At the option of the MHA, the lease may require security deposits. The amount of the security deposit cannot exceed one month's rent or a reasonable fixed amount as determined by the MHA. The MHA may allow for gradual accumulation of the security deposit by the family, or the family may be required to pay the security deposit in full prior to occupancy. Subject to applicable laws, interest earned on security deposits may be refunded to the tenant after vacating the unit, or used for tenant services or activities.

MHA Policy

Residents must pay a security deposit to the MHA at the time of admission. The amount of the security deposit will be equal to the family's total tenant payment at the time of move-in, and must be paid in full prior to occupancy.

The MHA will hold the security deposit for the period the family occupies the unit. The MHA will not use the security deposit for rent or other charges while the resident is living in the unit.

Within 30 days of move-out, the MHA will refund to the resident the amount of the security deposit (including interest earned on the security deposit), less any amount needed to pay the cost of unpaid rent, damages listed on the move-out inspection report that exceed normal wear and tear, and other charges due under the lease.

The MHA will provide the resident with a written list of any charges against the security deposit within 10 business days of the move-out inspection. If the resident disagrees with the amount charged, the MHA will provide a meeting to discuss the charges.

If the resident transfers to another unit, the MHA will transfer the security deposit to the new unit. The tenant will be billed for any maintenance or other charges due for the "old" unit.

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8-I.F. PAYMENTS UNDER THE LEASE

Rent Payments [24 CFR 966.4(b)(1)]

Families must pay the amount of the monthly tenant rent determined by the MHA in accordance with HUD regulations and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

The lease must specify the initial amount of the tenant rent at the beginning of the initial lease term, and the MHA must give written notice stating any change in the amount of tenant rent and when the change is effective.

MHA Policy

The tenant rent is due and payable at the MHA-designated location on the first of every month. If the first falls on a weekend or holiday, the rent is due and payable on the first business day thereafter.

If a family's tenant rent changes, the MHA will notify the family of the new amount and the effective date by sending a "Notice of Rent Adjustment" which will become an attachment to the lease.

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Late Fees and Nonpayment

At the option of the MHA, the lease may provide for payment of penalties when the family is late in paying tenant rent [24 CFR 966.4(b)(3)].

The lease must provide that late payment fees are not due and collectible until two weeks after the MHA gives written notice of the charges. The written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action [24 CFR 966.4(b)(4)].

The notice of proposed adverse action must identify the specific grounds for the action and inform the family of their right for a hearing under the MHA grievance procedures. The MHA must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed [24 CFR 966.4(e)(8)].

MHA Policy

If the family fails to pay their rent by the fifth day of the month, and the MHA has not agreed to accept payment at a later date, a 14 day Notice to Vacate will be issued to the resident for failure to pay rent, demanding payment in full or the surrender of the premises.

In addition, if the resident fails to make payment by the end of office hours on the fifth day of the month, a late fee of $25.00 will be charged. Notices of late fees will be in accordance with requirements regarding notices of adverse action. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the MHA may not take action for nonpayment of the fee until the conclusion of the grievance process. If the resident can document financial hardship, the late fee may be waived on a case-by-case basis.

When a check is returned for insufficient funds or is written on a closed account, the rent will be considered unpaid and a returned check fee of $25.00 will be charged to the family. The fee will be due and payable 14 days after billing.

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Excess Utility Charges

If the MHA charges the tenant for consumption of excess utilities, the lease must state the basis for the determination of such charges. The imposition of charges for consumption of excess utilities is permissible only if the charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances [24 CFR 966.4(b)(2)].

Schedules of special charges for utilities that are required to be incorporated in the lease by reference must be publicly posted in a conspicuous manner in the development office and must be furnished to applicants and tenants on request [24 CFR 966.5].

The lease must provide that charges for excess utility consumption are not due and collectible until two weeks after the MHA gives written notice of the charges. The written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action [24 CFR 966.4(b)(4)].

The notice of proposed adverse action must identify the specific grounds for the action and inform the family of their right to a hearing under the MHA grievance procedures. The MHA must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed [24 CFR 966.4(e)(8)].

MHA Policy

When applicable, families will be charged for excess utility usage according to the MHA's current posted schedule. Notices of excess utility charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the MHA may not take action for nonpayment of the charges until the conclusion of the grievance process.

Nonpayment of excess utility charges is a violation of the lease and is grounds for eviction.

The MHA may grant requests for relief from surcharges from excess utility consumption of MHA-furnished utilities as a reasonable accommodation where the MHA deems an exception is appropriate to meet the needs of elderly, ill, or disabled residents. In determining whether to grant this request, the MHA will consider special factors affecting utility usage that are not within the control of the resident, such as the need for medical equipment. Residents may request relief in accordance with Section 2-II.C. of this ACOP. The MHA will process such requests in accordance with Section 2-II.E. of this ACOP.

Notice of the availability of procedures for requesting relief (including the MHA representative with whom initial contact may be made by the resident) and the MHA's criteria for granting requests, will be included in each notice to residents of changes in utility allowances or surcharges as well as to new residents as part of the lease orientation.

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Maintenance and Damage Charges

If the MHA charges the tenant for maintenance and repair beyond normal wear and tear, the lease must state the basis for the determination of such charges [24 CFR 966.4(b)(2)].

Schedules of special charges for services and repairs which are required to be incorporated in the lease by reference must be publicly posted in a conspicuous manner in the development office and must be furnished to applicants and tenants on request [24 CFR 966.5].

The lease must provide that charges for maintenance and repair beyond normal wear and tear are not due and collectible until two weeks after the MHA gives written notice of the charges. The written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action [24 CFR 966.4(b)(4)].

The notice of proposed adverse action must identify the specific grounds for the action and inform the family of their right for a hearing under the MHA grievance procedures. The MHA must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed [24 CFR 966.4(e)(8)].

MHA Policy

When applicable, families will be charged for maintenance and/or damages according to the MHA's current schedule. Work that is not covered in the schedule will be charged based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable).

Notices of maintenance and damage charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the MHA may not take action for nonpayment of the charges until the conclusion of the grievance process.

Nonpayment of maintenance and damage charges is a violation of the lease and is grounds for eviction.

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8-I.G. MINIMUM HEATING STANDARDS [Notice PIH 2018-19]

MHAs in states, territories, or localities with existing minimum heating standards must use their respective local standards for public housing dwelling units. For MHAs where state or local minimum heating standards do not exist, MHAs must use the HUD-prescribed heating standards specified in Notice PIH 2018-19.

MHA Policy

The MHA is located in an area where state or local residential heating standards exist and will utilize those standards for public housing units. Therefore, the MHA's minimum heating standards are as follows:

Minimum temperature:

If the MHA controls the temperature, the minimum temperature in each unit must be at least [insert degrees Fahrenheit]. If the resident controls the temperature, the heating equipment must have the capability of heating to at least [insert degrees Fahrenheit].

Minimum temperature capability:

[If MHAs are allowed flexibility maintaining the indoor temperature when the outdoor temperature approaches the design day temperature, insert criteria for when flexibility applies and the minimum temperature threshold that the indoor temperature should never fall below. Note, the design day temperature refers to the lowest expected outdoor temperature a heating system was designed to accommodate.]

Measurement:

Temperature measurements must be taken according to the following methodology: [insert methodology for taking temperature measurements].

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PART II: INSPECTIONS

8-II.A. OVERVIEW

HUD regulations require the MHA to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, the MHA may require additional inspections, in accordance with MHA Policy. This part contains the MHA's policies governing inspections, notification of unit entry, and inspection results.

8-II.B. TYPES OF INSPECTIONS

Move-In Inspections [24 CFR 966.4(i)]

The lease must require the MHA and the family to inspect the dwelling unit prior to occupancy in order to determine the condition of the unit and equipment in the unit. A copy of the initial inspection, signed by the MHA and the tenant, must be provided to the tenant and retained in the resident file.

MHA Policy

Any adult family member may attend the initial inspection and sign the inspection form for the head of household.

Move-Out Inspections [24 CFR 966.4(i)]

The MHA must inspect the unit at the time the resident vacates the unit and must allow the resident to participate in the inspection if he or she wishes, unless the tenant vacates without notice to the MHA. The MHA must provide to the tenant a statement of any charges to be made for maintenance and damage beyond normal wear and tear.

The difference between the condition of the unit at move-in and move-out establishes the basis for any charges against the security deposit so long as the work needed exceeds that for normal wear and tear.

MHA Policy

When applicable, the MHA will provide the tenant with a statement of charges to be made for maintenance and damage beyond normal wear and tear, within 10 business days of conducting the move-out inspection.

Annual Inspections [24 CFR 5.705]

Section 6(f)(3) of the United States Housing Act of 1937 requires that MHAs inspect each public housing project annually to ensure that the project's units are maintained in decent, safe, and sanitary condition. The MHA shall continue using the Uniform Physical Condition Standards (UPCS) in 24 CFR 5, Subpart G, Physical Condition Standards and Inspection Requirements, to conduct annual project inspections. These standards address the inspection of the site area, building systems and components, and dwelling units.

MHA Policy

The MHA will inspect all occupied units annually using HUD's Uniform Physical Condition Standards (UPCS).

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Quality Control Inspections

The purpose of quality control inspections is to assure that all defects were identified in the original inspection, and that repairs were completed at an acceptable level of craftsmanship and within an acceptable time frame

MHA Policy

Supervisory quality control inspections will be conducted in accordance with the MHA's maintenance plan.

Special Inspections

MHA Policy

MHA staff may conduct a special inspection for any of the following reasons:

Housekeeping

Unit condition

Suspected lease violation

Preventive maintenance

Routine maintenance

There is reasonable cause to believe an emergency exists

Other Inspections

MHA Policy

Building exteriors, grounds, common areas and systems will be inspected according to the MHA's maintenance plan.

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8-II.C. NOTICE AND SCHEDULING OF INSPECTIONS

Notice of Entry

Non-emergency Entries [24 CFR 966.4(j)(1)]

The MHA may enter the unit, with reasonable advance notification to perform routine inspections and maintenance, make improvements and repairs, or to show the unit for re-leasing. A written statement specifying the purpose of the MHA entry delivered to the dwelling unit at least two days before such entry is considered reasonable advance notification.

MHA Policy

The MHA will notify the resident in writing at least 48 hours prior to any non-emergency inspection.

For regular annual inspections, the family will receive at least 2 weeks written notice of the inspection to allow the family to prepare the unit for the inspection.

Entry for repairs requested by the family will not require prior notice. Resident-requested repairs presume permission for the MHA to enter the unit.

Emergency Entries [24 CFR 966.4(j)(2)]

The MHA may enter the dwelling unit at any time without advance notice when there is reasonable cause to believe that an emergency exists. If no adult household member is present at the time of an emergency entry, the MHA must leave a written statement showing the date, time and purpose of the entry prior to leaving the dwelling unit.

Scheduling of Inspections

MHA Policy

Inspections will be conducted during business hours. If a family needs to reschedule an inspection, they must notify the MHA at least 24 hours prior to the scheduled inspection. The MHA will reschedule the inspection no more than once unless the resident has a verifiable good cause to delay the inspection. The MHA may request verification of such cause.

Attendance at Inspections

Residents are required to be present for move-in inspections [24 CFR 966.4(i)]. There is no such requirement for other types of inspections.

MHA Policy

Except at move-in inspections, the resident is not required to be present for the inspection. The resident may attend the inspection if he or she wishes.

If no one is at home, the inspector will enter the unit, conduct the inspection and leave a copy of the inspection report in the unit.

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8-II.D. INSPECTION RESULTS

The MHA is obligated to maintain dwelling units and the project in decent, safe and sanitary condition and to make necessary repairs to dwelling units [24 CFR 966.4(e)].

Emergency Repairs [24 CFR 966.4(h)]

If the unit is damaged to the extent that conditions are created which are hazardous to the life, health, or safety of the occupants, the tenant must immediately notify the MHA of the damage, and the MHA must make repairs within a reasonable time frame.

If the damage was caused by a household member or guest, the MHA must charge the family for the reasonable cost of repairs. The MHA may also take lease enforcement action against the family.

If the MHA cannot make repairs quickly, the MHA must offer the family standard alternative accommodations. If the MHA can neither repair the defect within a reasonable time frame nor offer alternative housing, rent shall be abated in proportion to the seriousness of the damage and loss in value as a dwelling. Rent shall not be abated if the damage was caused by a household member or guest, or if the resident rejects the alternative accommodations.

MHA Policy

When conditions in the unit are hazardous to life, health, or safety, the MHA will make repairs or otherwise abate the situation within 24 hours.

Defects hazardous to life, health or safety include, but are not limited to, the following:

- 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
- Any electrical problem or condition that could result in shock or fire
- 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
- Absence of a functioning toilet in the unit
- Inoperable smoke detectors

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Non-emergency Repairs

MHA Policy

The MHA will correct non-life threatening health and safety defects within 15 business days of the inspection date. If the MHA is unable to make repairs within that period due to circumstances beyond the MHA's control (e.g. required parts or services are not available, weather conditions, etc.) the MHA will notify the family of an estimated date of completion.

The family must allow the MHA access to the unit to make repairs.

Resident-Caused Damages

MHA Policy

Damages to the unit beyond wear and tear will be billed to the tenant in accordance with the policies in 8-I.F., Maintenance and Damage Charges.

Repeated or excessive damages to the unit beyond normal wear and tear will be considered a serious or repeated violation of the lease.

Housekeeping

MHA Policy

Residents whose housekeeping habits pose a non-emergency health or safety risk, encourage insect or rodent infestation, or cause damage to the unit are in violation of the lease. In these instances, the MHA will provide proper notice of a lease violation.

A reinspection will be conducted within 30 days to confirm that the resident has complied with the requirement to abate the problem. Failure to abate the problem or allow for a reinspection is considered a violation of the lease and may result in termination of tenancy in accordance with Chapter 13.

Notices of lease violation will also be issued to residents who purposely disengage the unit's smoke detector. Only one warning will be given. A second incidence will result in lease termination.

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EXHIBIT 8-1: SMOKE-FREE POLICY

In accordance with HUD regulations, the Housing Authority has adopted these smoke-free policies. The policies are effective as of Board approval date.

Due to the increased risk of fire, increased maintenance costs, and the known health effects of secondhand smoke, smoking is prohibited in all living units and interior areas, including but not limited to hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures. Smoking is also prohibited in outdoor areas within 25 feet from public housing and administrative office buildings.

This policy applies to all employees, residents, household members, guests, and service persons. Residents are responsible for ensuring that household members and guests comply with this rule.

The term "smoking" means any inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other prohibited tobacco product in any manner or any form. Prohibited tobacco products include water pipes or hookahs.

Violation of the smoke-free policy constitutes a violation of the terms of the public housing lease. Consequences of lease violations include termination of tenancy.

MHA POLICY

Residents and members of Resident's household shall not smoke anywhere in dwelling units, in the building where the Resident's dwelling is located or in any of the common areas (or adjoining grounds of such building or other parts of the rental community), nor shall Residents permit guests or visitors under the control of Resident to do so.

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Electronic Nicotine Delivery Systems (ENDS)

Electronic nicotine delivery systems (ENDS) include e-cigarettes, nicotine inhalers, and vaping devices.

Use of ENDS is not permitted in public housing units, common areas, or in outdoor areas within 25 feet from housing and administrative buildings.

Effective Date

The MHA's effective date(s) of this smoke-free policy is/are as follows:

Example 1: The smoke-free policy will be effective for all residents, household members, employees, guests, and service persons on JULY 30, 2018.

Enforcement

The MHA must enforce smoke-free policies when a resident violates this policy. When enforcing the lease, the MHA will provide due process and allow residents to exercise their right to an informal settlement and formal hearing. The MHA will not evict a resident for a single incident of smoking in violation of this policy. As such, the MHA will implement a graduated enforcement framework that includes escalating warnings. Prior to pursuing eviction for violation of smoke-free policies, the MHA will take specific, progressive monitoring and enforcement actions, while at the same time educating tenants and providing smoking cessation information. The lease will identify the actions that constitute a policy violation, quantify the number of documented, verified violations that warrant enforcement action, state any disciplinary actions that will be taken for persistent non-responsiveness or repeated noncompliance, and state how many instances of noncompliance will constitute a violation. Tenancy termination and eviction will be pursued only as a last resort. The MHA may terminate tenancy at any time for violations of the lease and failure to otherwise fulfill household obligations if resident behavior disturbs other residents' peaceful enjoyment and is not conducive to maintaining the property in a decent, safe, and sanitary condition.

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Upon issuance of a written warning from the property manager and/or a documented complaint, the MHA will increase the frequency of unit inspections for a suspected policy violator.

The MHA will provide information and resources on smoking cessation.

If the resident does not have any new violations for one calendar year, the resident will be considered to have a clear record, and no further enforcement action will be taken.

Repeated violation of the smoke-free policy may rise to the level of other good cause for termination of tenancy.

Reasonable Accommodation

While addiction to nicotine or smoking is not a disability, the MHA will provide reasonable accommodation to persons with disabilities who smoke that are in compliance with the requirements of this smoke-free policy.

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Chapter 9

REEXAMINATIONS

[24 CFR 960.257, 960.259, 966.4]

INTRODUCTION

The MHA is required to reexamine each family's income and composition periodically, and to adjust the family's rent accordingly. MHAs must adopt policies for conducting annual and interim reexaminations that are consistent with regulatory requirements, and must conduct reexaminations in accordance with such policies [24 CFR 960.257(c)].

The frequency with which the MHA must reexamine the income and composition of a family depends on whether the family pays income-based rent or flat rent. HUD requires the MHA to offer all families the choice of paying income-based rent or flat rent at least annually. The MHA's policies for offering families a choice of rents are located in Chapter 6.

This chapter discusses both annual and interim reexaminations.

> Part I: Annual Reexaminations for Families Paying Income Based Rents. This part discusses the requirements for annual reexamination of income and family composition. Full reexaminations are conducted at least once a year for families paying income-based rents.
>
> Part II: Reexaminations for Families Paying Flat Rents. This part contains the MHA's policies for conducting full reexaminations of family income and composition for families paying flat rents. These full reexaminations are conducted at least once every 3 years. This part also contains the MHA's policies for conducting annual updates of family composition for flat rent families.
>
> Part III: Interim Reexaminations. This part includes HUD requirements and MHA policies related to when a family may and must report changes that occur between annual reexaminations.
>
> Part IV: Recalculating Tenant Rent. After gathering and verifying required information for an annual or interim reexamination, the MHA must recalculate the tenant rent. While the basic policies that govern these calculations are provided in Chapter 6, this part describes the policies that affect these calculations during a reexamination.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this ACOP, apply to annual and interim reexaminations.

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PART I: ANNUAL REEXAMINATIONS FOR FAMILIES PAYING INCOME-BASED RENTS [24 CFR 960.257]

9-I.A. OVERVIEW

For those families who choose to pay income-based rent, the MHA must conduct a reexamination of income and family composition at least annually [24 CFR 960.257(a)(1)]. For families who choose flat rents, the MHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every 3 years [24 CFR 960.257(a)(2)]. Policies related to the reexamination process for families paying flat rent are located in Part II of this chapter.

For all residents of public housing, whether those residents are paying income-based or flat rents, the MHA must conduct an annual review of community service requirement compliance. This annual reexamination is also a good time to have residents sign consent forms for criminal background checks in case the criminal history of a resident is needed at some point for the purposes of lease enforcement or eviction.

The MHA is required to obtain all of the information necessary to conduct reexaminations. How that information will be collected is left to the discretion of the MHA. Families are required to provide current and accurate information on income, assets, allowances and deductions, family composition and community service compliance as part of the reexamination process [24 CFR 960.259].

This part contains the MHA's policies for conducting annual reexaminations.

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9-I.B STREAMLINED ANNUAL REEXAMINATIONS [24 CFR 960.257]

HUD permits MHAs 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 MHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or rate of interest. The MHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the MHA 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 MHA may streamline the verification of fixed income and may choose whether to verify non-fixed income amounts in years where no fixed-income review is required. If the family receives less than 90 percent of its income from fixed sources, the MHA may streamline the verification of fixed income and must verify non-fixed income annually.

MHA Policy

The MHA will streamline the annual reexamination process by applying the verified COLA or interest rate to fixed-income sources. The MHA 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 MHA 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 MHA 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.

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9-I.C. SCHEDULING ANNUAL REEXAMINATIONS

The MHA must establish a policy to ensure that the annual reexamination for each family paying an income-based rent is completed within a 12 month period [24 CFR 960.257(a)(1)].

MHA Policy

Generally, the MHA will schedule annual reexaminations to coincide with the family's anniversary date. The MHA will begin the annual reexamination process approximately 120 days in advance of the scheduled effective date.

Anniversary date is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family transfers to a new unit, the MHA will perform a new annual reexamination, and the anniversary date will be changed.

The MHA may also schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

Notification of and Participation in the Annual Reexamination Process

The MHA is required to obtain information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the MHA. However, MHAs should give tenants who were not provided the opportunity to provide contact information at the time of admission the option to complete Form HUD-92006 at this time. The MHA should provide the family with the opportunity to update, change, or remove information from the HUD-92006 at the time of the annual reexamination [Notice PIH 2009-36].

MHA Policy

Families generally are required to participate in an annual reexamination interview, which must be attended by the head of household, spouse, or cohead. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact the MHA to request a reasonable accommodation.

Notification of annual reexamination interviews will be sent by first-class mail and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

If the family is unable to attend a scheduled interview, the family should contact the MHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend the scheduled interview the MHA will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without MHA approval, the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

An advocate, interpreter, or other assistant may assist the family in the interview process.

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9-I.D. CONDUCTING ANNUAL REEXAMINATIONS

The terms of the public housing lease require the family to furnish information regarding income and family composition as may be necessary for the redetermination of rent, eligibility, and the appropriateness of the housing unit [24 CFR 966.4(c)(2)].

MHA Policy

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 MHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documentation 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 frame (plus any extensions), the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

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 agency 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

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Change in Unit Size

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. The MHA may use the results of the annual reexamination to require the family to move to an appropriate size unit [24 CFR 960.257(a)(4)]. Policies related to such transfers are located in Chapter 12.

Criminal Background Checks

Information obtained through criminal background checks may be used for lease enforcement and eviction [24 CFR 5.903(e)(1)(ii)]. Criminal background checks of residents will be conducted in accordance with the policy in Section 13-IV.B.

> MHA Policy
>
> Each household member age 18 and over will be required to execute a consent form for a criminal background check as part of the annual reexamination process.

Additionally, HUD recommends that at annual reexaminations MHAs 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].

> MHA Policy
>
> At the annual reexamination, the MHA 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 MHA will use the Dru Sjodin National Sex Offender database to verify the information provided by the tenant.

If the MHA proposes to terminate assistance based on lifetime sex offender registration information, the MHA 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 13.)

Compliance with Community Service

For families who include nonexempt individuals, the MHA must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a)(3)].

See Chapter 11 for the MHA's policies governing compliance with the community service requirement.

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9-I.E. EFFECTIVE DATES

As part of the annual reexamination process, the MHA must make appropriate adjustments in the rent after consultation with the family and upon verification of the information [24 CFR 960.257(a)(1)].

MHA Policy

In general, an *increase* in the tenant 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 the MHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the MHA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, *increases* in the tenant rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date.

If the MHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the MHA.

If the family causes a delay in processing the annual reexamination, d*ecreases* in the tenant rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the MHA by the date specified, and this delay prevents the MHA from completing the reexamination as scheduled.

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PART II: REEXAMINATIONS FOR FAMILIES PAYING FLAT RENTS [24 CFR 960.257(2)]

9-II.A. OVERVIEW

HUD requires that the MHA offer all families the choice of paying income-based rent or flat rent at least annually. The MHA's policies for offering families a choice of rents are located in Chapter 6.

For families who choose flat rents, the MHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every 3 years [24 CFR 960.257(a)(2)]. The MHA is only required to provide the amount of income-based rent the family might pay in those years that the MHA conducts a full reexamination of income and family composition, or upon request of the family after the family submits updated income information [24 CFR 960.253(e)(2)].

As it does for families that pay income-based rent, the MHA must also review compliance with the community service requirement for families with nonexempt individuals.

This part contains the MHA's policies for conducting reexaminations of families who choose to pay flat rents.

9-II.B. FULL REEXAMINATION OF FAMILY INCOME AND COMPOSITION

Frequency of Reexamination

MHA Policy

For families paying flat rents, the MHA will conduct a full reexamination of family income and composition once every 3 years.

Reexamination Policies

MHA Policy

In conducting full reexaminations for families paying flat rents, the MHA will follow the policies used for the annual reexamination of families paying income-based rent as set forth in Sections 9-I.B through 9-I.D above.

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9-II.C. REEXAMINATION OF FAMILY COMPOSITION ("ANNUAL UPDATE")

As noted above, full reexaminations are conducted every 3 years for families paying flat rents. In the years between full reexaminations, regulations require the MHA to conduct a reexamination of family composition ("annual update") [24 CFR 960.257(a)(2)].

The annual update process is similar to the annual reexamination process, except that the MHA does not collect information about the family's income and expenses, and the family's rent is not recalculated following an annual update.

Scheduling

The MHA must establish a policy to ensure that the reexamination of family composition for families choosing to pay the flat rent is completed at least annually [24 CFR 960.257(a)(2)].

MHA Policy

For families paying flat rents, annual updates will be conducted in each of the 2 years following the full reexamination.

In scheduling the annual update, the MHA will follow the policy used for scheduling the annual reexamination of families paying income-based rent as set forth in Section 9-I.B. above.

Conducting Annual Updates

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition [24 CFR 966.4(c)(2)].

MHA Policy

Generally, the family will not be required to attend an interview for an annual update. However, if the MHA determines that an interview is warranted, the family may be required to attend.

Notification of the annual update will be sent by first-class mail and will inform the family of the information and documentation that must be provided to the MHA. The family will have 10 business days to submit the required information to the MHA. If the family is unable to obtain the information or documents within the required time frame, the family may request an extension. The MHA will accept required documentation by mail, by email, by fax, or in person.

If the family's submission is incomplete, or the family does not submit the information in the required time frame, the MHA will send a second written notice to the family. The family will have 10 business days from the date of the second notice to provide the missing information or documentation to the MHA.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

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Change in Unit Size

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. The MHA may use the results of the annual update to require the family to move to an appropriate size unit [24 CFR 960.257(a)(4)]. Policies related to such transfers are located in Chapter 12.

Criminal Background Checks

Information obtained through criminal background checks may be used for lease enforcement and eviction [24 CFR 5.903(e)]. Criminal background checks of residents will be conducted in accordance with the policy in Section 13-IV.B.

MHA Policy

Each household member age 18 and over will be required to execute a consent form for criminal background check as part of the annual update process.

Compliance with Community Service

For families who include nonexempt individuals, the MHA must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a)(3)].

See Chapter 11 for the MHA's policies governing compliance with the community service requirement.

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PART III: INTERIM REEXAMINATIONS [24 CFR 960.257; 24 CFR 966.4]

9-III.A. OVERVIEW

Family circumstances may change during the period between annual reexaminations. HUD and MHA policies define the types of information about changes in family circumstances that must be reported, and under what circumstances the MHA must process interim reexaminations to reflect those changes. HUD regulations also permit the MHA to conduct interim reexaminations of income or family composition at any time.

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 change. The MHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and MHA policies that describe the changes families are *required* to report, the changes families *may choose* to report, and how the MHA will process both MHA- and family-initiated interim reexaminations.

9-III.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

The MHA must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to provisions of the public housing lease, the MHA has limited discretion in this area.

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. Policies related to such transfers are located in Chapter 12.

MHA Policy

All families, those paying income-based rent as well as flat rent, must report all changes in family and household composition that occur between annual reexaminations (or annual updates).

The MHA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

New Family Members Not Requiring Approval

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require MHA approval. However, the family is required to promptly notify the MHA of the addition [24 CFR 966.4(a)(1)(v)].

MHA Policy

The family must inform the MHA of the birth, adoption, or court-awarded custody of a child within 10 business days.

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New Family and Household Members Requiring Approval

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request MHA approval to add a new family member [24 CFR 966.4(a)(1)(v)] or other household member (live-in aide or foster child) [24 CFR 966.4(d)(3)].

The MHA may adopt reasonable policies concerning residence by a foster child or a live-in aide, and defining the circumstances in which MHA consent will be given or denied. Under such policies, the factors considered by the MHA may include [24 CFR 966.4(d)(3)(i)]:

- Whether the addition of a new occupant may necessitate a transfer of the family to another unit, and whether such units are available.
- The MHA's obligation to make reasonable accommodation for persons with disabilities.

MHA Policy

Families must request MHA 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 a total of 30 cumulative calendar days during any 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the MHA prior to the individual moving into the unit.

If adding a person to a household (other than a child by birth, adoption, or court-awarded custody) will require a transfer to a larger size unit (under the transfer policy in Chapter 12), the MHA will approve the addition only if the family can demonstrate that there are medical needs or other extenuating circumstances, including reasonable accommodation, that should be considered by the MHA. Exceptions will be made on a case-by-case basis.

The MHA will not approve the addition of a new family or household member unless the individual meets the MHA's eligibility criteria (see Chapter 3) and documentation requirements (See Chapter 7, Part II).

If the MHA determines that an individual does not meet the MHA's eligibility criteria or documentation requirements, the MHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The MHA 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

MHA Policy

If a family member ceases to reside in the unit, the family must inform the MHA within 10 business days. This requirement also applies to family members who had been considered temporarily absent, who are now permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the MHA within 10 business days.

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9-III.C. CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations can be scheduled either because the MHA 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 MHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

MHA Policy

This section only applies to families paying income-based rent. Families paying flat rent are not required to report changes in income or expenses.

MHA-initiated Interim Reexaminations

MHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the MHA. They are not scheduled because of changes reported by the family.

MHA Policy

The MHA will conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), the MHA will conduct an interim reexamination at the start, to adjust the exclusion with any changes in income, and at the conclusion of the 24-month eligibility period.

If the family has reported zero income, the MHA will conduct an interim reexamination 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), the MHA 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 becomes available, the MHA will conduct an interim reexamination.

The MHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

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Family-Initiated Interim Reexaminations

The MHA must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 960.257(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 960.257(b)].

Required Reporting

HUD regulations give the MHA the discretion to determine the circumstances under which families will be required to report changes affecting income.

MHA Policy

Families are required to report all increases in earned income, including new employment, within 10 business days of the date the change takes effect.

The MHA will only conduct interim reexaminations for families that qualify for the earned income disallowance (EID), and only when the EID family's rent will change as a result of the increase. In all other cases, the MHA will note the information in the tenant file, but will not conduct an interim reexamination.

Families are not required to report any other changes in income or expenses.

Optional Reporting

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 960.257(b)]. The MHA must process the request if the family reports a change that will result in a reduced family income [PH Occ GB, p. 159].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

MHA Policy

If a family reports a change that it was not required to report and that would result in an increase in the tenant rent, the MHA will note the information in the tenant file, but will not conduct an interim reexamination.

If a family reports a change that it was not required to report and that would result in a decrease in the tenant rent, the MHA will conduct an interim reexamination. See Section 9-III.D. for effective dates.

Families may report changes in income or expenses at any time.

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9-III.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

MHA Policy

The family may notify the MHA of changes either orally or in writing. If the family provides oral notice, the MHA may also require the family to submit the changes in writing.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the MHA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the MHA 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 the MHA. This time frame may be extended for good cause with MHA approval. The MHA will accept required documentation by mail, by email, by fax, or in person.

Effective Dates

The MHA must make the interim reexamination within a reasonable time after the family request [24 CFR 960.257(b)].

MHA Policy

If the tenant rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

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 underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the tenants 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. In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

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PART IV: RECALCULATING TENANT RENT

9-IV.A. OVERVIEW

For those families paying income-based rent, the MHA must recalculate the rent amount based on the income information received during the reexamination process and notify the family of the changes [24 CFR 966.4, 960.257]. 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.

9-IV.B. CHANGES IN UTILITY ALLOWANCES [24 CFR 965.507, 24 CFR 966.4]

The tenant rent calculations must reflect any changes in the MHA's utility allowance schedule [24 CFR 960.253(c)(3)]. Chapter 16 discusses how utility allowance schedules are established.

MHA Policy

Unless the MHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted.

9-IV.C. NOTIFICATION OF NEW TENANT RENT

The public housing lease requires the MHA to give the tenant written notice stating any change in the amount of tenant rent, and when the change is effective [24 CFR 966.4(b)(1)(ii)].

When the MHA redetermines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of the MHA's schedule of Utility Allowances for families in the MHA's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, the MHA must notify the tenant that the tenant may ask for an explanation stating the specific grounds of the MHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the MHA's grievance procedure [24 CFR 966.4(c)(4)].

MHA Policy

The notice to the family will include the annual and adjusted income amounts that were used to calculate the tenant rent.

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9-IV.D. DISCREPANCIES

During an annual or interim reexamination, the MHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the MHA may discover errors made by the MHA. When errors resulting in the overpayment or underpayment of rent are discovered, corrections will be made in accordance with the policies in Chapter 15.

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Chapter 10

PETS

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

INTRODUCTION

This chapter explains the MHA's policies on the keeping of pets and describes any criteria or standards pertaining to the policies. The rules adopted are reasonably related to the legitimate interest of the MHA to provide a decent, safe and sanitary living environment for all tenants, and to protect and preserve the physical condition of the property, as well as the financial interest of the MHA.

The chapter is organized as follows:

Part I: Service Animals and Assistance Animals. This part explains the difference between service animals, assistance animals, and pets, and contains policies related to the designation of a service animal or assistance animal as well as their care and handling.

Part II: Pet policies for all developments. This part includes pet policies that are common to both elderly/disabled developments and general occupancy developments.

Part III: Pet deposits and fees for elderly/disabled developments. This part contains policies for pet deposits and fees that are applicable to elderly/disabled developments.

Part IV: Pet deposits and fees for general occupancy developments. This part contains policies for pet deposits and fees that are applicable to general occupancy developments.

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PART I: SERVICE ANIMALS AND ASSISTANCE ANIMALS

[Section 504; Fair Housing Act (42 U.S.C.); 24 CFR 5.303; 24 CFR 960.705; Notice FHEO 2013-01]

10-I.A. OVERVIEW

This part discusses situations under which permission for a service animal or an assistance animal may be denied, and also establishes standards for the care of service and assistance animals.

Notice FHEO 2013-01 was published April 25, 2013. The notice explains the difference between service animals and assistance animals. While the ADA applies to the premises of public housing agencies and to "public accommodations" such as stores and movie theaters, it does not apply to private-market rental housing. Therefore, in public housing the MHA must evaluate a request for a service animal under both the ADA and the Fair Housing Act. Service animals are limited to trained dogs.

Neither service animals nor assistance animals are pets, and thus, are not subject to the MHA's pet policies described in Parts II through IV of this chapter [24 CFR 5.303; 960.705; Notice FHEO 2013-01].

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10-I.B. APPROVAL OF SERVICE ANIMALS AND ASSISTANCE ANIMALS

Notice FHEO 2013-01 states that the MHA should first evaluate the request as a service animal under the ADA. The MHA may only ask whether the dog is a service animal required due to a disability, and what tasks the animal has been trained to perform.

The MHA cannot require proof of training or certification for a service animal, even if the disability and/or tasks performed are not readily apparent. If the disability and/or tasks performed are not readily apparent, no further inquiries may be made.

MHAs may only deny a request for a service animal in limited circumstances:

- The animal is out of control and the handler does not take effective action to control it
- The animal is not housebroken, or
- The animal poses a direct threat to health or safety that cannot be eliminated or reduced by a reasonable modification of other policies

A service animal must be permitted in all areas of the facility where members of the public are allowed.

If the animal does not qualify as a service animal under the ADA, the MHA must next determine whether the animal would qualify as an assistance animal under the reasonable accommodation provisions of the Fair Housing Act. Such assistance animals may include animals other than dogs.

A person with a disability is not automatically entitled to have an assistance animal. Reasonable accommodation requires that there is a relationship between the person's disability and his or her need for the animal [PH Occ GB, p. 179].

A MHA may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed by the person with the disability [PH Occ GB, p. 178].

A MHA's refusal to permit persons with a disability to use and live with an assistance animal that is needed to assist them, would violate Section 504 of the Rehabilitation Act and the Fair Housing Act unless [PH Occ GB, p. 179]:

- There is reliable objective evidence that the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation
- There is reliable objective evidence that the animal would cause substantial physical damage to the property of others

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MHAs have the authority to regulate service animals and assistance animals under applicable federal, state, and local law [24 CFR 5.303(b)(3); 960.705(b)(3)].

MHA Policy

For an animal to be excluded from the pet policy and be considered a service animal, it must be a trained dog, and there must be a person with disabilities in the household who requires the dog's services.

For an animal to be excluded from the pet policy and be considered an assistance animal, there must be a person with disabilities in the household, and the family must request and the MHA approve a reasonable accommodation in accordance with the policies contained in Chapter 2.

10-I.C. CARE AND HANDLING

HUD regulations do not affect any authority a MHA may have to regulate service animals and assistance animals under federal, state, and local law [24 CFR 5.303; 24 CFR 960.705].

MHA Policy

Residents must care for service animals and assistance animals in a manner that complies with state and local laws, including anti-cruelty laws.

Residents must ensure that service animals and assistance animals do not pose a direct threat to the health or safety of others, or cause substantial physical damage to the development, dwelling unit, or property of other residents.

When a resident's care or handling of a service animal or assistance animal violates these policies, the MHA will consider whether the violation could be reduced or eliminated by a reasonable accommodation. If the MHA determines that no such accommodation can be made, the MHA may withdraw the approval of a particular service or assistance animal.

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PART II: PET POLICIES FOR ALL DEVELOPMENTS

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

10-II.A. OVERVIEW

The purpose of a pet policy is to establish clear guidelines for ownership of pets and to ensure that no applicant or resident is discriminated against regarding admission or continued occupancy because of ownership of pets. It also establishes reasonable rules governing the keeping of common household pets. This part contains pet policies that apply to all developments.

10-II.B. MANAGEMENT APPROVAL OF PETS

Registration of Pets

MHAs may require registration of the pet with the MHA [24 CFR 960.707(b)(5)].

MHA Policy

Pets must be registered with the MHA before they are brought onto the premises.

Registration includes documentation signed by a licensed veterinarian or state/local authority that the pet has received all inoculations required by state or local law, and that the pet has no communicable disease(s) and is pest-free. This registration must be renewed annually and will be coordinated with the annual reexamination date.

Pets will not be approved to reside in a unit until completion of the registration requirements.

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Refusal to Register Pets

MHA Policy

The MHA will refuse to register a pet if:

The pet is not *a common household pet* as defined in Section 10-II.C. below

Keeping the pet would violate any pet restrictions listed in this policy

The pet owner fails to provide complete pet registration information, or fails to update the registration annually

The applicant has previously been charged with animal cruelty under state or local law; or has been evicted, had to relinquish a pet or been prohibited from future pet ownership due to pet rule violations or a court order

The MHA reasonably determines that the pet owner is unable to keep the pet in compliance with the pet rules and other lease obligations. The pet's temperament and behavior may be considered as a factor in determining the pet owner's ability to comply with provisions of the lease.

If the MHA refuses to register a pet, a written notification will be sent to the pet owner within 10 business days of the MHA's decision. The notice will state the reason for refusing to register the pet and will inform the family of their right to appeal the decision in accordance with the MHA's grievance procedures.

Pet Agreement

MHA Policy

Residents who have been approved to have a pet must enter into a pet agreement with the MHA, or the approval of the pet will be withdrawn.

The pet agreement is the resident's certification that he or she has received a copy of the MHA's pet policy and applicable house rules, that he or she has read the policies and/or rules, understands them, and agrees to comply with them.

The resident further certifies by signing the pet agreement that he or she understands that noncompliance with the MHA's pet policy and applicable house rules may result in the withdrawal of MHA approval of the pet or termination of tenancy.

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10-II.C. STANDARDS FOR PETS [24 CFR 5.318; 960.707(b)]

MHAs may establish reasonable requirements related to pet ownership including, but not limited to:

- Limitations on the number of animals in a unit, based on unit size
- Prohibitions on types of animals that the MHA classifies as dangerous, provided that such classifications are consistent with applicable state and local law
- Prohibitions on individual animals, based on certain factors, including the size and weight of the animal
- Requiring pet owners to have their pets spayed or neutered

MHAs may not require pet owners to have any pet's vocal cords removed.

MHAs may not require pet owners to obtain or carry liability insurance.

MHAs may not require that cats be declawed.

Definition of "Common Household Pet"

There is no regulatory definition of common household pet for public housing programs, although the regulations for pet ownership in both elderly/disabled and general occupancy developments use the term. The regulations for pet ownership in elderly/disabled developments expressly authorize MHAs to define the term [24 CFR 5.306(2)].

MHA Policy

Common household pet means a domesticated animal, such as a dog, cat, bird, or fish that is traditionally recognized as a companion animal and is kept in the home for pleasure rather than commercial purposes.

The following animals are not considered common household pets:

Reptiles

Rodents

Insects

Arachnids

Wild animals or feral animals

Pot-bellied pigs

Animals used for commercial breeding

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Pet Restrictions

MHA Policy

The following animals are not permitted:

Any animal whose adult weight will exceed 25 pounds

Dogs of the pit bull, rottweiler, chow, or boxer breeds

Ferrets or other animals whose natural protective mechanisms pose a risk to small children of serious bites or lacerations

Any animal not permitted under state or local law or code

Number of Pets

MHA Policy

Residents may own a maximum of 2 pets, only 1 of which may be a dog.

In the case of fish, residents may keep no more than can be maintained in a safe and healthy manner in a tank holding up to 10 gallons. Such a tank or aquarium will be counted as 1 pet.

Other Requirements

MHA Policy

Dogs and cats must be spayed or neutered at the time of registration or, in the case of underage animals, within 30 days of the pet reaching 6 months of age. Exceptions may be made upon veterinary certification that subjecting this particular pet to the procedure would be temporarily or permanently medically unsafe or unnecessary.

Pets must be licensed in accordance with state or local law. Residents must provide proof of licensing at the time of registration and annually, in conjunction with the resident's annual reexamination.

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10-II.D. PET RULES

Pet owners must maintain pets responsibly, in accordance with MHA policies, and in compliance with applicable state and local public health, animal control, and animal cruelty laws and regulations [24 CFR 5.315; 24 CFR 960.707(a)].

Pet Area Restrictions

MHA Policy

Pets must be maintained within the resident's unit. When outside of the unit (within the building or on the grounds) dogs and cats must be kept on a leash or carried. They must be under the control of the resident or other responsible individual at all times.

Pets other than dogs or cats must be kept in a cage or carrier when outside of the unit.

Pets are not permitted in common areas including lobbies, community rooms and laundry areas except for those common areas which are entrances to and exits from the building.

Pet owners are not permitted to exercise pets or permit pets to deposit waste on project premises outside of the areas designated for such purposes.

Designated Pet/No-Pet Areas [24 CFR 5.318(g), PH Occ GB, p. 182]

MHAs may designate buildings, floors of buildings, or sections of buildings as no-pet areas where pets generally may not be permitted. Pet rules may also designate buildings, floors of building, or sections of building for residency by pet-owning tenants.

MHAs may direct initial tenant moves as may be necessary to establish pet and no-pet areas. The MHA may not refuse to admit, or delay admission of, an applicant on the grounds that the applicant's admission would violate a pet or no-pet area. The MHA may adjust the pet and no-pet areas or may direct such additional moves as may be necessary to accommodate such applicants for tenancy or to meet the changing needs of the existing tenants.

MHAs may not designate an entire development as a no-pet area, since regulations permit residents to own pets.

MHA Policy

With the exception of common areas as described in the previous policy, the MHA has not designated any buildings, floors of buildings, or sections of buildings as no-pet areas. In addition, the MHA has not designated any buildings, floors of buildings, or sections of buildings for residency of pet-owning tenants.

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Cleanliness

MHA Policy

The pet owner shall be responsible for the removal of waste from the exercise area by placing it in a sealed plastic bag and disposing of it in a container provided by the MHA.

The pet owner shall take adequate precautions to eliminate any pet odors within or around the unit and to maintain the unit in a sanitary condition at all times.

Litter box requirements:

Pet owners must promptly dispose of waste from litter boxes and must maintain litter boxes in a sanitary manner.

Litter shall not be disposed of by being flushed through a toilet.

Litter boxes shall be kept inside the resident's dwelling unit.

Alterations to Unit

MHA Policy

Pet owners shall not alter their unit, patio, premises or common areas to create an enclosure for any animal.

Installation of pet doors is prohibited.

Noise

MHA Policy

Pet owners must agree to control the noise of pets so that such noise does not constitute a nuisance to other residents or interrupt their peaceful enjoyment of their housing unit or premises. This includes, but is not limited to loud or continuous barking, howling, whining, biting, scratching, chirping, or other such activities.

Pet Care

MHA Policy

Each pet owner shall be responsible for adequate care, nutrition, exercise and medical attention for his/her pet.

Each pet owner shall be responsible for appropriately training and caring for his/her pet to ensure that the pet is not a nuisance or danger to other residents and does not damage MHA property.

No animals may be tethered or chained inside or outside the dwelling unit at any time.

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Responsible Parties

MHA Policy

The pet owner will be required to designate two responsible parties for the care of the pet if the health or safety of the pet is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet.

A resident who cares for another resident's pet must notify the MHA and sign a statement that they agree to abide by all of the pet rules.

Pets Temporarily on the Premises

MHA Policy

Pets that are not owned by a tenant are not allowed on the premises. Residents are prohibited from feeding or harboring stray animals.

This rule does not apply to visiting pet programs sponsored by a humane society or other non-profit organizations, and approved by the MHA.

Pet Rule Violations

MHA Policy

All complaints of cruelty and all dog bites will be referred to animal control or an applicable agency for investigation and enforcement.

If a determination is made on objective facts supported by written statements, that a resident/pet owner has violated the pet rules, written notice will be served.

The notice will contain a brief statement of the factual basis for the determination and the pet rule(s) that were violated. The notice will also state:

> That the pet owner has 10 business days from the effective date of the service of notice to correct the violation or make written request for a meeting to discuss the violation
>
> That the pet owner is entitled to be accompanied by another person of his or her choice at the meeting
>
> That the pet owner's failure to correct the violation, request a meeting, or appear at a requested meeting may result in initiation of procedures to remove the pet, or to terminate the pet owner's tenancy

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Notice for Pet Removal

MHA Policy

If the pet owner and the MHA are unable to resolve the violation at the meeting or the pet owner fails to correct the violation in the time period allotted by the MHA, the MHA may serve notice to remove the pet.

The notice will contain:

A brief statement of the factual basis for the MHA's determination of the pet rule that has been violated

The requirement that the resident /pet owner must remove the pet within 30 calendar days of the notice

A statement that failure to remove the pet may result in the initiation of termination of tenancy procedures

Pet Removal

MHA Policy

If the death or incapacity of the pet owner threatens the health or safety of the pet, or other factors occur that render the owner unable to care for the pet, the situation will be reported to the responsible party designated by the pet owner.

If the responsible party is unwilling or unable to care for the pet, or if the MHA after reasonable efforts cannot contact the responsible party, the MHA may contact the appropriate state or local agency and request the removal of the pet.

Termination of Tenancy

MHA Policy

The MHA may initiate procedures for termination of tenancy based on a pet rule violation if:

The pet owner has failed to remove the pet or correct a pet rule violation within the time period specified

The pet rule violation is sufficient to begin procedures to terminate tenancy under terms of the lease

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Emergencies

MHA Policy

The MHA will take all necessary steps to ensure that pets that become vicious, display symptoms of severe illness, or demonstrate behavior that constitutes an immediate threat to the health or safety of others, are immediately removed from the premises by referring the situation to the appropriate state or local entity authorized to remove such animals.

If it is necessary for the MHA to place the pet in a shelter facility, the cost will be the responsibility of the pet owner.

If the pet is removed as a result of any aggressive act on the part of the pet, the pet will not be allowed back on the premises.

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PART III: PET DEPOSITS AND FEES IN ELDERLY/DISABLED DEVELOPMENTS

10-III.A. OVERVIEW

This part describes the MHA's policies for pet deposits and fees in elderly, disabled and mixed population developments. Policies governing deposits and fees in general occupancy developments are described in Part IV.

10-III.B. PET DEPOSITS

Payment of Deposit

The MHA may require tenants who own or keep pets in their units to pay a refundable pet deposit. This deposit is in addition to any other financial obligation generally imposed on tenants of the project [24 CFR 5.318(d)(1)].

The maximum amount of pet deposit that may be charged by a MHA on a per dwelling unit basis, is the higher of the total tenant payment (TTP) or such reasonable fixed amount as the MHA may require. The MHA may permit gradual accumulation of the pet deposit by the pet owner [24 CFR 5.318(d)(3)].

The pet deposit is not part of the rent payable by the resident [24 CFR 5.318(d)(5)].

> MHA Policy
>
> Pet owners are required to pay a pet deposit in addition to any other required deposits. The amount of the deposit is the higher of the family's total tenant payment or $50.00, and must be paid in full before the pet is brought on the premises.

Refund of Deposit [24 CFR 5.318(d)(1)]

The MHA may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet, including (but not limited to) the costs of repairs and replacements to, and fumigation of, the tenant's dwelling unit. The MHA must refund the unused portion of the pet deposit to the tenant within a reasonable time after the tenant moves from the project or no longer owns or keeps a pet in the unit.

> MHA Policy
>
> The MHA will refund the pet deposit to the resident, less the costs of any damages caused by the pet to the dwelling unit, within 30 days of move-out or removal of the pet from the unit.
>
> The resident will be billed for any amount that exceeds the pet deposit.
>
> The MHA will provide the resident with a written list of any charges against the pet deposit within 10 business days of the move-out inspection. If the resident disagrees with the amount charged to the pet deposit, the MHA will provide a meeting to discuss the charges.

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10-III.C. OTHER CHARGES

Pet-Related Damages During Occupancy

MHA Policy

All reasonable expenses incurred by the MHA as a result of damages directly attributable to the presence of the pet in the project will be the responsibility of the resident, including:

The cost of repairs and replacements to the resident's dwelling unit

Fumigation of the dwelling unit

Repairs to common areas of the project

The expense of flea elimination shall also be the responsibility of the resident.

If the resident is in occupancy when such costs occur, the resident shall be billed for such costs in accordance with the policies in Section 8-I.G, Maintenance and Damage Charges. Pet deposits will not be applied to the costs of pet-related damages during occupancy.

Charges for pet-related damage are not part of rent payable by the resident.

Pet Waste Removal Charge

The regulations do not address the MHA's ability to impose charges for house pet rule violations. However, charges for violation of MHA pet rules may be treated like charges for other violations of the lease and MHA tenancy rules.

MHA Policy

A separate pet waste removal charge of $10.00 per occurrence will be assessed against pet owners who fail to remove pet waste in accordance with this policy.

Notices of pet waste removal charges will be in accordance with requirements regarding notices of adverse action. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the MHA may not take action for nonpayment of the charge until the conclusion of the grievance process.

Charges for pet waste removal are not part of rent payable by the resident.

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PART IV: PET DEPOSITS AND FEES IN GENERAL OCCUPANCY DEVELOPMENTS

10-IV.A. OVERVIEW

This part describes the MHA's policies for pet deposits and fees for those who reside in general occupancy developments.

10-IV.B. PET DEPOSITS

A MHA may require a refundable pet deposit to cover additional costs attributable to the pet and not otherwise covered [24 CFR 960.707(b)(1)].

A MHA that requires a resident to pay a pet deposit must place the deposit in an account of the type required under applicable State or local law for pet deposits, or if there are no such requirements, for rental security deposits, if applicable. The MHA must comply with such laws as to retention of the deposit, interest, and return of the deposit to the resident, and any other applicable requirements [24 CFR 960.707(d)].

Payment of Deposit

MHA Policy

Pet owners are required to pay a pet deposit of $200 in addition to any other required deposits. The deposit must be paid in full before the pet is brought on the premises.

The pet deposit is not part of rent payable by the resident.

Refund of Deposit

MHA Policy

The MHA will refund the pet deposit to the resident, less the costs of any damages caused by the pet to the dwelling unit, within 30 days of move-out or removal of the pet from the unit.

The resident will be billed for any amount that exceeds the pet deposit.

The MHA will provide the resident with a written list of any charges against the pet deposit within 10 business days of the move-out inspection. If the resident disagrees with the amount charged to the pet deposit, the MHA will provide a meeting to discuss the charges.

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10-IV.C. NON-REFUNDABLE NOMINAL PET FEE

MHAs may require payment of a non-refundable nominal pet fee to cover the reasonable operating costs to the development relating to the presence of pets [24 CFR 960.707(b)(1)].

MHA Policy

The MHA requires pet owners to pay a non-refundable nominal pet fee.

This fee is intended to cover the reasonable operating costs to the project relating to the presence of pets. Reasonable operating costs to the project relating to the presence of pets include, but are not limited to:

Landscaping costs

Pest control costs

Insurance costs

Clean-up costs

The pet fee of $10.00 will be billed on a monthly basis, and payment will be due 14 calendar days after billing.

Charges for the non-refundable pet fee are not part of rent payable by the resident.

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10-IV.D. OTHER CHARGES

Pet-Related Damages During Occupancy

MHA Policy

All reasonable expenses incurred by the MHA as a result of damages directly attributable to the presence of the pet in the project will be the responsibility of the resident, including:

The cost of repairs and replacements to the resident's dwelling unit

Fumigation of the dwelling unit

Repairs to common areas of the project

The expense of flea elimination shall also be the responsibility of the resident.

If the resident is in occupancy when such costs occur, the resident shall be billed for such costs in accordance with the policies in Section 8-I.G, Maintenance and Damage Charges. Pet deposits will not be applied to the costs of pet-related damages during occupancy.

Charges for pet-related damage are not part of rent payable by the resident.

Pet Waste Removal Charge

The regulations do not address the MHA's ability to impose charges for house pet rule violations. However, charges for violation of MHA pet rules may be treated like charges for other violations of the lease and MHA tenancy rules.

MHA Policy

A separate pet waste removal charge of $10.00 per occurrence will be assessed against pet owners who fail to remove pet waste in accordance with this policy.

Such charges will be due and payable 14 calendar days after billing.

Charges for pet waste removal are not part of rent payable by the resident.

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Chapter 11

COMMUNITY SERVICE

INTRODUCTION

This chapter explains HUD regulations requiring MHAs to implement a community service program for all nonexempt adults living in public housing.

This chapter describes HUD regulations and MHA policies related to these topics in two parts:

> Part I: Community Service Requirements. This part describes who is subject to the community service requirement, who is exempt, and HUD's definition of economic self-sufficiency.
>
> Part II: MHA Implementation of Community Service. This part provides MHA policy regarding MHA implementation and program design.

PART I: COMMUNITY SERVICE REQUIREMENT

11-I.A. OVERVIEW

HUD regulations pertaining to the community service requirement are contained in 24 CFR 960 Subpart F (960.600 through 960.609). MHAs and residents must comply with the community service requirement, effective with MHA fiscal years that commenced on or after October 1, 2000. Per 903.7(l)(1)(iii), the MHA Plan must contain a statement of how the MHA will comply with the community service requirement, including any cooperative agreement that the MHA has entered into or plans to enter into.

Community service is the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities [24 CFR 960.601(b)].

In administering community service requirements, the MHA must comply with all nondiscrimination and equal opportunity requirements [24 CFR 960.605(c)(5)].

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11-I.B. REQUIREMENTS

Each adult resident of the MHA, who is not exempt, must [24 CFR 960.603(a)]:

- Contribute 8 hours per month of community service; or
- Participate in an economic self-sufficiency program (as defined in the regulations) for 8 hours per month; or
- Perform 8 hours per month of combined activities (community service and economic self-sufficiency programs).
- The required community service or self-sufficiency activity may be completed 8 hours each month or may be aggregated across a year. Any blocking of hours is acceptable as long as 96 hours is completed by each annual certification of compliance [Notice PIH 2015-12].

Definitions

Exempt Individual [24 CFR 960.601(b), Notice PIH 2015-12]

An *exempt individual* is an adult who:

- Is age 62 years or older
- Is blind or disabled (as defined under section 216[i][l] or 1614 of the Social Security Act), and who certifies that because of this disability s/he is unable to comply with the service provisions
- Is a primary caretaker of such an individual
- Is engaged in work activities

  MHA Policy

  The MHA will consider 30 hours per week as the minimum number of hours needed to qualify for a work activity exemption.

- Is able to meet requirements of being exempted under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the MHA is located, including a state-administered welfare-to-work program
  - This exemption applies to anyone whose characteristics or family situation meet the welfare agency exemption criteria and can be verified.
- Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the MHA is located, including a state-administered welfare-to-work program and the supplemental nutrition assistance program (SNAP), and has not been found by the state or other administering entity to be in noncompliance with such program.

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Community Service [24 CFR 960.601(b), Notice PIH 2015-12]

Community service is the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self responsibility in the community. Community service is not employment and may not include political activities.

Eligible community service activities include, but are not limited to, work at:

- Local public or nonprofit institutions such as schools, head start programs, before or after school programs, child care centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult day care programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing)
- Nonprofit organizations serving MHA residents or their children such as: Boy or Girl Scouts, Boys or Girls Club, 4-H clubs, Police Assistance League (PAL), organized children's recreation, mentoring or education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs
- Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels
- Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts
- MHA housing to improve grounds or provide gardens (so long as such work does not alter the MHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board
- Care for the children of other residents so parent may volunteer

MHAs may form their own policy in regards to accepting community services at profit-motivated entities, acceptance of volunteer work performed at homes or offices of general private citizens, and court-ordered or probation-based work.

<u>MHA Policy</u>

Community services at profit-motivated entities, volunteer work performed at homes or offices of general private citizens, and court-ordered or probation-based work will not be considered eligible community service activities.

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Economic Self-Sufficiency Program [24 CFR 5.603(b), Notice PIH 2015-12]

For purposes of satisfying the community service requirement, an *economic self-sufficiency program* is defined by HUD as any program designed to encourage, assist, train, or facilitate economic independence of assisted families or to provide work for such families.

Eligible self-sufficiency activities include, but are not limited to:

- Job readiness or job training
- Training programs through local one-stop career centers, workforce investment boards (local entities administered through the U.S. Department of Labor), or other training providers
- Employment counseling, work placement, or basic skills training
- Education, including higher education (junior college or college), GED classes, or reading, financial, or computer literacy classes
- Apprenticeships (formal or informal)
- English proficiency or English as a second language classes
- Budgeting and credit counseling
- Any other program necessary to ready a participant to work (such as substance abuse or mental health counseling)

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Work Activities [42 U.S.C. 607(d)]

As it relates to an exemption from the community service requirement, *work activities* means:

- Unsubsidized employment
- Subsidized private sector employment
- Subsidized public sector employment
- Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available
- On-the-job training
- Job search and job readiness assistance
- Community service programs
- Vocational educational training (not to exceed 12 months with respect to any individual)
- Job skills training directly related to employment
- Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency
- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate

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Notification Requirements [24 CFR 960.605(c)(2), Notice PIH 2015-12, Notice PIH 2016- 06]

The MHA must give each family a written description of the community service requirement, the process for claiming status as an exempt person, and the process for MHA verification of exempt status. The MHA must also notify the family of its determination identifying the family members who are subject to the service requirement, and the family members who are exempt. In addition, the family must sign a certification, such as Attachment A of Notice PIH 2015-12, that they have received and read the policy and understand that if they are not exempt, failure to comply with the requirement will result in nonrenewal of their lease. The family must also sign a certification at annual reexamination, such as Attachment B of Notice PIH 2015-12, certifying that they understand the requirement.

MHA Policy

The MHA will provide the family with a copy of the Community Service Policy found in Exhibit 11-1 of this chapter, at lease-up, lease renewal, when a family member is determined to be subject to the community service requirement during the lease term, and at any time upon the family's request. The policy will notify the family that self-certification forms are subject to review by the MHA.

On an annual basis, at the time of lease renewal, the MHA will notify the family in writing of the family members who are subject to the community service requirement and the family members who are exempt. If the family includes nonexempt individuals the notice will include a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which they may record the activities they perform and the number of hours contributed. The form will also have a place for a signature by an appropriate official, who will certify to the activities and hours completed.

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11-I.C. DETERMINATION OF EXEMPTION STATUS AND COMPLIANCE [24 CFR 960.605(c)(3)]

The MHA must review and verify family compliance with service requirements annually at least thirty days before the end of the twelve month lease term. The policy for documentation and verification of compliance with service requirements may be found at Section 11-I.D., Documentation and Verification.

MHA Policy

Where the lease term does not coincide with the effective date of the annual reexamination, the MHA will change the effective date of the annual reexamination to coincide with the lease term. In making this change, the MHA will ensure that the annual reexamination is conducted within 12 months of the last annual reexamination.

Annual Determination

Determination of Exemption Status

An exempt individual is excused from the community service requirement [24 CFR 960.603(a)].

MHA Policy

At least 60 days prior to lease renewal, the MHA will review and verify the exemption status of all adult family members. This verification will only be done on an annual basis unless the family reports a change or the MHA has reason to believe that an individual's exemption status has changed. For individuals who are exempt because they are 62 years of age and older, verification of exemption status will be done only at the initial examination.

Upon completion of the verification process, the MHA will notify the family of its determination in accordance with the policy in Section 11-I.B., Notification Requirements.

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Determination of Compliance

The MHA must review resident family compliance with service requirements annually at least 30 days before the end of the twelve month lease term [24 CFR 960.605(c)(3)]. As part of this review, the MHA must verify that any family member that is not exempt from the community service requirement has met his or her service obligation.

MHA Policy

Approximately 60 days prior to the end of the lease term, the MHA will provide written notice requiring the family to submit documentation that all subject family members have complied with the service requirement. The family will have 10 business days to submit the MHA required documentation form(s).

If the family fails to submit the required documentation within the required timeframe, or MHA approved extension, the subject family members will be considered noncompliant with community service requirements, and notices of noncompliance will be issued pursuant to the policies in Section 11-I.E., Noncompliance.

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Change in Status between Annual Determinations

MHA Policy

Exempt to Nonexempt Status

If an exempt individual becomes nonexempt during the twelve month lease term, it is the family's responsibility to report this change to the MHA within 10 business days.

Within 10 business days of a family reporting such a change, or the MHA determining such a change is necessary, the MHA will provide written notice of the effective date of the requirement, a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which the family member may record the activities performed and number of hours contributed.

The effective date of the community service requirement will be the first of the month following 30 day notice.

Determination of Initial Compliance

When an adult family member becomes subject to community service, he or she must perform 8 hours of community service for the months he or she is subject to the requirement before the end of the lease term (anniversary date).

Example 1: Alberto Jones turns 18 on 5/10/15 and is not exempt from the community service requirement. His community service requirement begins on 6/1/15, and his initial compliance is reviewed before the end of the lease term (anniversary date), which is 11/30/15.

- Alberto must perform 6 months of community service in his initial compliance period, before the end of the lease term (anniversary date).

Example 2: Lisa Dewhurst leaves her job on 9/20/14 and is not exempt from the community service requirement. Her community service requirement begins on 10/1/14, and her initial compliance is reviewed before the end of the lease term (anniversary date), which is 6/30/15.

- Ms. Dewhurst must perform 9 months of community service in her initial compliance period, before the end of the lease term (anniversary date).

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Nonexempt to Exempt Status

If a nonexempt person becomes exempt during the twelve month lease term, it is the family's responsibility to report this change to the MHA within 10 business days. Any claim of exemption will be verified by the MHA in accordance with the policy at 11-I.D., Documentation and Verification of Exemption Status.

Within 10 business days of a family reporting such a change, or the MHA determining such a change is necessary, the MHA will provide the family written notice that the family member is no longer subject to the community service requirement, if the MHA is able to verify the exemption.

The exemption will be effective immediately.

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11-I.D. DOCUMENTATION AND VERIFICATION [24 CFR 960.605(c)(4), 960.607, Notice PIH 2016-08]

The MHA must retain reasonable documentation of service requirement performance or exemption in participant files.

Documentation and Verification of Exemption Status

MHA Policy

All family members who claim they are exempt from the community service requirement will be required to sign the community service exemption certification form found in Exhibit 11-3. The MHA will provide a completed copy to the family and will keep a copy in the tenant file.

The MHA will verify that an individual is exempt from the community service requirement by following the verification hierarchy and documentation requirements in Chapter 7.

The MHA makes the final determination whether or not to grant an exemption from the community service requirement. If a resident does not agree with the MHA's determination, s/he can dispute the decision through the MHA's grievance procedures (see Chapter 14).

Documentation and Verification of Compliance

At each regularly scheduled reexamination, each nonexempt family member presents a signed standardized certification form developed by the MHA of community service and self-sufficiency activities performed over the last 12 months [Notice PIH 2015-12].

If qualifying community service activities are administered by an organization other than the MHA, a family member who is required to fulfill a service requirement must provide documentation required by the MHA. The MHA may require a self-certification or certification from a third party [24 CFR 960.607].

If the MHA accepts self-certification of compliance with the community service requirement, it must provide a form which includes a statement that the client performed the required hours, contact information for the community service provider, a description of activities performed, and dates of service.

If the MHA accepts self-certification, it must validate a sample of certifications through third-party documentation. The MHA must notify families that self-certification forms are available and that a sample of self-certifications will be validated.

HUD strongly encourages MHAs to investigate community service compliance when there are questions of accuracy.

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MHA Policy

Each individual who is subject to the community service requirement will be required to record their community service or self-sufficiency activities and the number of hours contributed on the required form. The certification form will also include places for signatures and phone numbers of supervisors, instructors, and counselors certifying to the number of hours contributed.

Families will be required to submit the documentation to the MHA, upon request by the MHA, at least annually.

If the MHA has reasonable cause to believe that the certification provided by the family is false or fraudulent, the MHA has the right to require additional third-party verification.

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11-I.E. NONCOMPLIANCE

Noncompliant Residents

The lease specifies that it is renewed automatically for all purposes, unless the family fails to comply with the community service requirement. Violation of the service requirement is grounds for nonrenewal of the lease at the end of the twelve month lease term, but not for termination of tenancy during the course of the twelve month lease term [24 CFR 960.603(b)].

MHAs may not evict a family due to CSSR noncompliance. However, if MHA finds a tenant is noncompliant with CSSR, the MHA must provide written notification to the tenant of the noncompliance which must include:

- A brief description of the finding of non-compliance with CSSR.
- A statement that the MHA will not renew the lease at the end of the current 12-month lease term unless the tenant enters into a written work-out agreement with the MHA or the family provides written assurance that is satisfactory to the MHA explaining that the tenant or other noncompliant resident no longer resides in the unit. Such written work-out agreement must include the means through which a noncompliant family member will comply with the CSSR requirement [24 CFR 960.607(c), Notice PIH 2015-12].

The notice must also state that the tenant may request a grievance hearing on the MHA's determination, in accordance with the MHA's grievance procedures, and that the tenant may exercise any available judicial remedy to seek timely redress for the MHA's nonrenewal of the lease because of the MHA's determination.

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MHA Policy

The notice of noncompliance will be sent at least 45 days prior to the end of the lease term.

The family will have 10 business days from the date of the notice of noncompliance to enter into a written work-out agreement to cure the noncompliance over the 12 month term of the new lease, provide documentation that the noncompliant resident no longer resides in the unit, or to request a grievance hearing.

If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has actually vacated the unit before the MHA will agree to continued occupancy of the family. Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the family member that previously resided with them.

If the family does not request a grievance hearing, or does not take either corrective action required by the notice of noncompliance within the required 10 business day timeframe, the MHA will terminate tenancy in accordance with the policies in Section 13-IV.D.

Continued Noncompliance and Enforcement Documentation [24 CFR 960.607(b)]

Should a family member refuse to sign a written work-out agreement, or fail to comply with the terms of the work-out agreement, MHAs are required to initiate termination of tenancy proceedings at the end of the current 12-month lease (see 24 CFR 966.53(c)) for failure to comply with lease requirements. When initiating termination of tenancy proceedings, the MHA will provide the following procedural safeguards:

- Adequate notice to the tenant of the grounds for terminating the tenancy and for non-renewal of the lease;
- Right of the tenant to be represented by counsel;
- Opportunity for the tenant to refute the evidence presented by the MHA, including the right to confront and cross-examine witnesses and present any affirmative legal or equitable defense which the tenant may have; and,
- A decision on the merits.

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MHA Policy

Notices of continued noncompliance will be sent at least 30 days prior to the end of the lease term and will also serve as the family's termination notice. The notice will meet the requirements for termination notices described in Section 13-IV.D, Form, Delivery, and Content of the Notice.

The family will have 10 business days from the date of the notice of non-compliance to provide documentation that the noncompliant resident no longer resides in the unit, or to request a grievance hearing.

If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has actually vacated the unit before the MHA will agree to continued occupancy of the family. Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the noncompliant family member that previously resided with them.

If the family does not request a grievance hearing, or provide such documentation within the required 10 business day timeframe, the family's lease and tenancy will automatically terminate at the end of the current lease term without further notice.

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PART II: IMPLEMENTATION OF COMMUNITY SERVICE

11-II.A. OVERVIEW

Each MHA must develop a policy for administration of the community service and economic self-sufficiency requirements for public housing. It is in the MHA's best interests to develop a viable, effective community service program, to provide residents the opportunity to engage in the community and to develop competencies.

MHA Implementation of Community Service

The MHA may not substitute any community service or self-sufficiency activities performed by residents for work ordinarily performed by MHA employees, or replace a job at any location where residents perform activities to satisfy the service requirement [24 CFR 960.609].

MHA Policy

The MHA will notify its insurance company if residents will be performing community service at the MHA. In addition, the MHA will ensure that the conditions under which the work is to be performed are not hazardous.

If a disabled resident certifies that s/he is able to perform community service, the MHA will ensure that requests for reasonable accommodation are handled in accordance with the policies in Chapter 2.

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MHA Program Design

The MHA may administer qualifying community service or economic self-sufficiency activities directly, or may make community service activities available through a contractor, or through partnerships with qualified organizations, including resident organizations, and community agencies or institutions [24 CFR 960.605(b)].

MHA Policy

The MHA will attempt to provide the broadest choice possible to residents as they choose community service activities.

The MHA's goal is to design a service program that gives residents viable opportunities to become involved in the community and to gain competencies and skills. The MHA will work with resident organizations and community organizations to design, implement, assess and recalibrate its community service program.

The MHA will make every effort to identify volunteer opportunities throughout the community, especially those in proximity to public housing developments. To the greatest extent possible, the MHA will provide names and contacts at agencies that can provide opportunities for residents, including persons with disabilities, to fulfill their community service obligations.

Any written agreements or partnerships with contractors and/or qualified organizations, including resident organizations, are described in the MHA Plan.

The MHA will provide in-house opportunities for volunteer work or self-sufficiency programs when possible.

When the MHA has a ROSS program, a ROSS Service Coordinator, or an FSS program, the MHA will coordinate individual training and service plans (ITSPs) with the community service requirement. Regular meetings with MHA coordinators will satisfy community service activities and MHA coordinators will verify community service hours within individual monthly logs.

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EXHIBIT 11-1: COMMUNITY SERVICE AND SELF-SUFFICIENCY POLICY

A. Background

The Quality Housing and Work Responsibility Act of 1998 requires that all nonexempt (see definitions) public housing adult residents (18 or older) contribute eight (8) hours per month of community service (volunteer work) or participate in eight (8) hours of training, counseling, classes or other activities that help an individual toward self-sufficiency and economic independence. This is a requirement of the public housing lease.

B. Definitions

Community Service – community service activities include, but are not limited to, work at:

- Local public or nonprofit institutions such as schools, head start programs, before or after school programs, child care centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult day care programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing)
- Nonprofit organizations serving MHA residents or their children such as: Boy or Girl Scouts, Boys or Girls Club, 4-H clubs, Police Assistance League (PAL), organized children's recreation, mentoring or education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs
- Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels
- Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts
- MHA housing to improve grounds or provide gardens (so long as such work does not alter the MHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board
- Care for the children of other residents so parent may volunteer

Note: Political activity is excluded.

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Self-Sufficiency Activities – self-sufficiency activities include, but are not limited to:

- Job readiness or job training
- Training programs through local one-stop career centers, workforce investment boards (local entities administered through the U.S. Department of Labor), or other training providers
- Employment counseling, work placement, or basic skills training
- Education, including higher education (junior college or college), or reading, financial, or computer literacy classes
- Apprenticeships (formal or informal)
- English proficiency or English as a second language classes
- Budgeting and credit counseling
- Any other program necessary to ready a participant to work (such as substance abuse or mental health counseling)

Exempt Adult – an adult member of the family who meets any of the following criteria:

- Is 62 years of age or older
- Is blind or a person with disabilities (as defined under section 216[i][l] or 1614 of the Social Security Act), and who certifies that because of this disability he or she is unable to comply with the service provisions, or is the primary caretaker of such an individual
- Is engaged in *work activities*
- Is able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the MHA is located, including a state-administered welfare-to-work program; or
- Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the MHA is located, including a state-administered welfare-to-work program and the supplemental nutrition assistance program (SNAP), and has not been found by the state or other administering entity to be in noncompliance with such program

MHAs can use reasonable guidelines in clarifying the work activities in coordination with TANF, as appropriate.

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Work Activities – as it relates to an exemption from the community service requirement, *work activities* means:

- Unsubsidized employment
- Subsidized private sector employment
- Subsidized public sector employment
- Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available
- On-the-job training
- Job search and job readiness assistance
- Community service programs
- Vocational educational training (not to exceed 12 months with respect to any individual)
- Job skills training directly related to employment
- Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency
- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate
- Provision of child care services to an individual who is participating in a community service program

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C. Requirements of the Program

1. The eight (8) hours per month may be either volunteer work or self-sufficiency program activity, or a combination of the two.
2. At least eight (8) hours of activity must be performed each month, or may be aggregated across a year. Any blocking of hours is acceptable as long as long as 96 hours is completed by each annual certification of compliance.
3. Family obligation:
   - At lease execution, all adult members (18 or older) of a public housing resident family must:
     - Sign a certification (Attachment A) that they have received and read this policy and understand that if they are not exempt, failure to comply with the community service requirement will result in a nonrenewal of their lease; and
     - Declare if they are exempt. If exempt, they must complete the Exemption Form (Exhibit 11-3) and provide documentation of the exemption.
   - Upon written notice from the MHA, nonexempt family members must present complete documentation of activities performed during the applicable lease term. This documentation will include places for signatures of supervisors, instructors, or counselors, certifying the number of hours.
   - If a family member is found to be noncompliant at the end of the 12-month lease term, he or she, and the head of household, will be required to sign an agreement with the housing authority to make up the deficient hours over the next twelve (12) month period, or the lease will be terminated.
   - At annual reexamination, the family must also sign a certification certifying that they understand the community service requirement.
4. Change in exempt status:
   - If, during the twelve (12) month lease period, a nonexempt person becomes exempt, it is his or her responsibility to report this to the MHA and provide documentation of exempt status.
   - If, during the twelve (12) month lease period, an exempt person becomes nonexempt, it is his or her responsibility to report this to the MHA. Upon receipt of this information the MHA will provide the person with the appropriate documentation form(s) and a list of agencies in the community that provide volunteer and/or training opportunities.

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D. Authority Obligation

1. To the greatest extent possible and practicable, the MHA will:
   - Provide names and contacts at agencies that can provide opportunities for residents, including residents with disabilities, to fulfill their community service obligations.
   - Provide in-house opportunities for volunteer work or self-sufficiency activities.
2. The MHA will provide the family with a copy of this policy, and all applicable exemption verification forms and community service documentation forms, at lease-up, lease renewal, when a family member becomes subject to the community service requirement during the lease term, and at any time upon the family's request.
3. Although exempt family members will be required to submit documentation to support their exemption, the MHA will verify the exemption status in accordance with its verification policies. The MHA will make the final determination as to whether or not a family member is exempt from the community service requirement. Residents may use the MHA's grievance procedure if they disagree with the MHA's determination.
4. Noncompliance of family member:
   - At least thirty (30) days prior to the end of the 12-month lease term, the MHA will begin reviewing the exempt or nonexempt status and compliance of family members;
   - If, at the end of the initial 12-month lease term under which a family member is subject to the community service requirement, the MHA finds the family member to be noncompliant, the MHA will not renew the lease unless:
     - The head of household and any other noncompliant resident enter into a written agreement with the MHA, to make up the deficient hours over the next twelve (12) month period; or
     - The family provides written documentation satisfactory to the MHA that the noncompliant family member no longer resides in the unit.
   - If, at the end of the next 12-month lease term, the family member is still not compliant, a 30-day notice to terminate the lease will be issued and the entire family will have to vacate, unless the family provides written documentation satisfactory to the MHA that the noncompliant family member no longer resides in the unit;
   - The family may use the MHA's grievance procedure to dispute the lease termination.

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All adult family members must sign and date below, certifying that they have read and received a copy of this Community Service and Self-Sufficiency Policy.

Resident	Date
Resident	Date
Resident	Date
Resident	Date

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EXHIBIT 11-2: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(i)(l) and Section 1416(excerpt) FOR PURPOSES OF EXEMPTION FROM COMMUNITY SERVICE

Social Security Act:

216(i)(1): Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term "disability" means (A) 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 has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

Section 1416 (excerpt):

SEC. 1614. *[42 U.S.C. 1382c]* (a)(1) For purposes of this title, the term "aged, blind, or disabled individual" means an individual who—

> (A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and
>
> (B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act), or
>
> (ii) is a child who is a citizen of the United States and, who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.
>
> (2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.
>
> (3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this title if he is unable 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 twelve months.

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EXHIBIT 11-3: MHA DETERMINATION OF EXEMPTION FOR COMMUNITY SERVICE

Family: _____

Adult family member: _____

This adult family member meets the requirements for being exempted from the MHA's community service requirement for the following reason:

❒ 62 years of age or older *(Documentation of age in file)*

❒ Is a person with disabilities and self-certifies below that he or she is unable to comply with the community service requirement (*Documentation of HUD definition of disability in file)*

Tenant certification: I am a person with disabilities and am unable to comply with the community service requirement.

_____ _____
Signature of Family Member Date

❒ Is the primary caretaker of such an individual in the above category *(Documentation in file)*

❒ Is engaged in work activities *(Verification in file)*

❒ Is able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the MHA is located, including a state-administered welfare-to-work program (*Documentation in file*)

❒ Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which the MHA is located, including a state-administered welfare-to-work program and the supplemental nutrition assistance program (SNAP), and has not been found by the state or other administering entity to be in noncompliance with such program *(Documentation in file)*

_____ _____
Signature of Family Member Date

_____ _____
Signature of MHA Official Date

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EXHIBIT 11-4: CSSR WORK-OUT AGREEMENT

Date: _____

Noncompliant Adult: _____

Adult family member: _____

Community Service & Self-Sufficiency Requirement (CSSR):

Under Section 12 of the U.S. Housing Act, the_____(insert name of MHA) is required to enforce the community service and self-sufficiency requirement (CSSR). Under the CSSR, each nonexempt adult family member residing in public housing must perform 8 hours per month of community service or self sufficiency activities.

Noncompliance:_____(insert name of MHA) has found that the nonexempt individual named above is in noncompliance with the CSSR. This work-out agreement is the MHA's written notification to you of this noncompliance.

Our records show that for the most recent lease term you were required to perform _____hours of CSSR activities. However, there were_____hours of verified CSSR activities. Therefore, you are in noncompliance for_____hours.

_____ (insert name of MHA) will not renew the lease at the end of the current 12-month lease term unless the head of household and noncompliant adult sign a written work-out agreement with _____ (insert name of MHA) or the family provides written assurance that is satisfactory to _____ (insert name of MHA) explaining that the noncompliant adult no longer resides in the unit. The regulations require that the work-out agreement include the means through which a noncompliant family member will comply with the CSSR requirement. [24 CFR 960.607(c), Notice PIH 2015-12]. The terms of the CSSR work-out agreement are on the reverse side of this page.

Enforcement: Should a family member refuse to sign this CSSR work-out agreement, or fail to comply with the terms of this CSSR work-out agreement, or fail to provide satisfactory written assurance that the noncompliant adult no longer resides in the unit,_____(insert name of MHA) is required to initiate termination of tenancy proceedings at the end of the current 12-month lease [24 CFR 966.53(c)].

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Terms of CSSR Work-Out Agreement

Noncompliant Adult: _____

Please check one of the below boxes:

❒ I [head of household or spouse/cohead] certify that the noncompliant adult named above no longer resides in the unit. [Verification attached.]

❒ I, the noncompliant adult named above, agree to complete_____hours in the upcoming 12-month lease term. These hours include the_____hours not fulfilled in the most previous lease term, plus the 96 hours for the upcoming lease term.

Below is a description of means through which I will comply with the CSSR requirement:

	Description of Activity	Number of Hours
1.		
2.		
3.		
4.		
5.		
	Total Hours	

SIGNED AND ATTESTED THIS DATE

*Signature:*_____ *Date:* _____
Head of Household

*Signature:*_____ *Date:* _____
Noncompliant Adult, if other than Head of Household

*Signature:*_____ *Date:* _____
MHA Official

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Chapter 12

TRANSFER POLICY

INTRODUCTION

This chapter explains the MHA's transfer policy, based on HUD regulations, HUD guidance, and MHA policy decisions.

This chapter describes HUD regulations and MHA policies related to transfers in four parts:

> Part I: Emergency Transfers. This part describes emergency transfers, emergency transfer procedures, and payment of transfer costs.
>
> Part II: MHA Required Transfers. This part describes types of transfers that may be required by the MHA, notice requirements, and payment of transfer costs.
>
> Part III: Transfers Requested by Residents. This part describes types of transfers that may be requested by residents, eligibility requirements, security deposits, payment of transfer costs, and handling of transfer requests.
>
> Part IV: Transfer Processing. This part describes creating a waiting list, prioritizing transfer requests, the unit offer policy, examples of good cause, deconcentration, transferring to another development and reexamination.

The MHA may require the tenant to move from the unit under some circumstances. There are also emergency circumstances under which alternate accommodations for the tenant must be provided, that may or may not require a transfer.

The tenant may also request a transfer, such as a request for a new unit as a reasonable accommodation.

The MHA must have specific policies in place to deal with acceptable transfer requests.

PART I: EMERGENCY TRANSFERS

12-I.A. OVERVIEW

HUD categorizes certain situations that require emergency transfers [PH Occ GB, p. 147]. The emergency transfer differs from a typical transfer in that it requires immediate action by the MHA.

In the case of a genuine emergency, it may be unlikely that the MHA will have the time or resources to immediately transfer a tenant. Due to the immediate need to vacate the unit, placing the tenant on a transfer waiting list would not be appropriate. Under such circumstances, if an appropriate unit is not immediately available, the MHA should find alternate accommodations for the tenant until the emergency passes, or a permanent solution, i.e., return to the unit or transfer to another unit, is possible.

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12-I.B. EMERGENCY TRANSFERS

If the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants, the MHA must offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time [24 CFR 966.4(h)].

The VAWA 2013 final rule requires the MHA to adopt an emergency transfer plan for victims of domestic violence, dating violence, sexual assault, or stalking.

MHA Policy

The following are considered emergency circumstance warranting an immediate transfer of the tenant or family:

Maintenance conditions in the resident's unit, building or at the site that pose an immediate, verifiable threat to the life, health, or safety of the resident or family members that cannot be repaired or abated within 24 hours. Examples of such unit or building conditions would include: a gas leak, no heat in the building during the winter, no water, toxic contamination, and serious water leaks.

A verified incident of domestic violence, dating violence, sexual assault, or stalking. For instances of domestic violence, dating violence, sexual assault, or stalking, the threat may be established through documentation outlined in section 16-VII.D. In order to request the emergency transfer, the requestor must submit an emergency transfer request form (HUD-5383) (Exhibit 16-4 of this ACOP), although, the MHA may waive this requirement in order to expedite the transfer process.

The MHA will immediately process requests for transfers due to domestic violence, dating violence, sexual assault, or stalking. The MHA will allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available. The MHA defines *immediately available* as a vacant unit, that is ready for move-in within a reasonable period of time, not to exceed **[insert number of days]**. If an internal transfer to a safe unit is not immediately available, the MHA will assist the resident in seeking an external emergency transfer either within or outside the MHA's programs.

The MHA has adopted an emergency transfer plan, which is included as Exhibit 16-3 to this plan.

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12-I.C. EMERGENCY TRANSFER PROCEDURES

MHA Policy

If the transfer is necessary because of maintenance conditions, and an appropriate unit is not immediately available, the MHA will provide temporary accommodations to the tenant by arranging for temporary lodging at a hotel or similar location. If the conditions that required the transfer cannot be repaired, or the condition cannot be repaired in a reasonable amount of time, the MHA will transfer the resident to the first available and appropriate unit after the temporary relocation.

Emergency transfers that arise due to maintenance conditions are mandatory for the tenant.

If the emergency transfer is necessary to protect a victim of domestic violence, dating violence, sexual assault, or stalking, the MHA will follow procedures outlined in Exhibit 16-4.

12-I.D. COSTS OF TRANSFER

MHA Policy

The MHA will bear the reasonable costs of temporarily accommodating the tenant and of long term transfers, if any, due to emergency conditions.

The reasonable cost of transfers includes the cost of packing, moving, and unloading.

The MHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, the MHA will collect information from companies in the community that provide these services.

The MHA will reimburse the family for eligible out-of-pocket moving expenses up to the MHA's established moving allowance.

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PART II: MHA REQUIRED TRANSFERS

12-II.A. OVERVIEW

HUD regulations regarding transfers are minimal, leaving it up to the MHA to develop reasonable transfer policies.

The MHA may require that a resident transfer to another unit under some circumstances. For example, the MHA may require a resident to transfer to make an accessible unit available to a disabled family. The MHA may also transfer a resident in order to maintain occupancy standards based on family composition. Finally, a MHA may transfer residents in order to demolish or renovate the unit.

A transfer that is required by the MHA is an adverse action, and is subject to the notice requirements for adverse actions [24 CFR 966.4(e)(8)(i)].

12-II.B. TYPES OF MHA REQUIRED TRANSFERS

MHA Policy

The types of transfers that may be required by the MHA, include, but are not limited to, transfers to make an accessible unit available for a disabled family, transfers to comply with occupancy standards, transfers for demolition, disposition, revitalization, or rehabilitation, and emergency transfers as discussed in Part I of this chapter.

Transfers required by the MHA are mandatory for the tenant.

Transfers to Make an Accessible Unit Available

When a family is initially given an accessible unit, but does not require the accessible features, the MHA may require the family to agree to move to a non-accessible unit when it becomes available [24 CFR 8.27(b)].

MHA Policy

When a non-accessible unit becomes available, the MHA will transfer a family living in an accessible unit that does not require the accessible features, to an available unit that is not accessible. The MHA may wait until a disabled resident requires the accessible unit before transferring the family that does not require the accessible features out of the accessible unit.

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Occupancy Standards Transfers

The MHA may require a resident to move when a reexamination indicates that there has been a change in family composition, and the family is either overcrowded or over-housed according to MHA policy [24 CFR 960.257(a)(4)]. On some occasions, the MHA may initially place a resident in an inappropriately sized unit at lease-up, where the family is over-housed, to prevent vacancies. The public housing lease must include the tenant's agreement to transfer to an appropriately sized unit based on family composition [24 CFR 966.4(c)(3)].

MHA Policy

The MHA will transfer a family when the family size has changed and the family is now too large (overcrowded) or too small (over-housed) for the unit occupied.

For purposes of the transfer policy, overcrowded and over-housed are defined as follows:

Overcrowded: the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides, according to the chart in Section 5-I.B.

Over-h*oused:* the family no longer qualifies for the bedroom size in which they are living based on the MHA's occupancy standards as described in Section 5-I.B.

The MHA may also transfer a family who was initially placed in a unit in which the family was over-housed to a unit of an appropriate size based on the MHA's occupancy standards, when the MHA determines there is a need for the transfer.

The MHA may elect not to transfer an over-housed family in order to prevent vacancies.

A family that is required to move because of family size will be advised by the MHA that a transfer is necessary and that the family has been placed on the transfer list.

Families that request and are granted an exception to the occupancy standards (for either a larger or smaller size unit) in accordance with the policies in Section 5-I.C. will only be required to transfer if it is necessary to comply with the approved exception.

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Demolition, Disposition, Revitalizations, or Rehabilitation Transfers

These transfers permit the MHA to demolish, sell or do major capital or rehabilitation work at a building site [PH Occ GB, page 148].

MHA Policy

The MHA will relocate a family when the unit or site in which the family lives is undergoing major rehabilitation that requires the unit to be vacant, or the unit is being disposed of or demolished. The MHA's relocation plan may or may not require transferring affected families to other available public housing units.

If the relocation plan calls for transferring public housing families to other public housing units, affected families will be placed on the transfer list.

In cases of revitalization or rehabilitation, the family may be offered a temporary relocation if allowed under Relocation Act provisions, and may be allowed to return to their unit, depending on contractual and legal obligations, once revitalization or rehabilitation is complete.

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12-II.C. ADVERSE ACTION [24 CFR 966.4(e)(8)(i)]

A MHA required transfer is an adverse action. As an adverse action, the transfer is subject to the requirements regarding notices of adverse actions. If the family requests a grievance hearing within the required timeframe, the MHA may not take action on the transfer until the conclusion of the grievance process.

12-II.D. COST OF TRANSFER

MHA Policy

The MHA will bear the reasonable costs of transfers that the MHA requires, except that residents will be required to bear the cost of occupancy standards transfers.

The reasonable costs of transfers include the cost of packing, moving, and unloading.

The MHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, the MHA will collect information from companies in the community that provide these services.

The MHA will reimburse the family for eligible out-of-pocket moving expenses up to the MHA's established moving allowance.

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PART III: TRANSFERS REQUESTED BY TENANTS

12-III.A. OVERVIEW

HUD provides the MHA with discretion to consider transfer requests from tenants. The only requests that the MHA is required to consider are requests for reasonable accommodation. All other transfer requests are at the discretion of the MHA. To avoid administrative costs and burdens, this policy limits the types of requests that will be considered by the MHA.

Some transfers that are requested by tenants should be treated as higher priorities than others due to the more urgent need for the transfer.

12-III.B. TYPES OF RESIDENT REQUESTED TRANSFERS

MHA Policy

The types of requests for transfers that the MHA will consider are limited to requests for transfers to alleviate a serious or life threatening medical condition, transfers due to a threat of physical harm or criminal activity, reasonable accommodation, transfers to a different unit size as long as the family qualifies for the unit according to the MHA's occupancy standards, and transfers to a location closer to employment. No other transfer requests will be considered by the MHA.

The MHA will consider the following as high priority transfer requests:

When a transfer is needed to alleviate verified medical problems of a serious or life-threatening nature

When there has been a verified threat of physical harm or criminal activity. Such circumstances may, at the MHA's discretion, include an assessment by law enforcement indicating that a family member is the actual or potential victim of a criminal attack, retaliation for testimony, or a hate crime.

When a family requests a transfer as a reasonable accommodation. Examples of a reasonable accommodation transfer include, but are not limited to, a transfer to a first floor unit for a person with mobility impairment, or a transfer to a unit with accessible features

The MHA will consider the following as regular priority transfer requests:

When a family requests a larger bedroom size unit even though the family does not meet the MHA's definition of overcrowded, as long as the family meets the MHA's occupancy standards for the requested size unit

When the head of household or spouse is employed 25 miles or more from the public housing unit, has no reliable transportation, and public transportation is not adequate

Transfers requested by the tenant are considered optional for the tenant.

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12-III.C. ELIGIBILITY FOR TRANSFER

Transferring residents do not have to meet the admission eligibility requirements pertaining to income or preference. However, the MHA may establish other standards for considering a transfer request [PH Occ GB, p. 150].

MHA Policy

Except where reasonable accommodation is being requested, the MHA will only consider transfer requests from residents that meet the following requirements:

Have not engaged in criminal activity that threatens the health and safety or residents and staff

Owe no back rent or other charges, or have a pattern of late payment

Have no housekeeping lease violations or history of damaging property

Can get utilities turned on in the name of the head of household (applicable only to properties with tenant-paid utilities)

A resident with housekeeping standards violations will not be transferred until the resident passes a follow-up housekeeping inspection.

Exceptions to the good record requirement may be made when it is to the MHA's advantage to make the transfer.

Exceptions will also be made when the MHA determines that a transfer is necessary to protect the health or safety of a resident who is a victim of domestic violence, dating violence, sexual assault, or stalking, and who provides documentation of abuse in accordance with section 16-VII.D of this ACOP. Tenants who are not in good standing may still request an emergency transfer under VAWA.

If a family requested to be placed on the waiting list for a unit size smaller than designated by the occupancy guidelines, the family will not be eligible to transfer to a larger size unit for a period of two years from the date of admission, unless they have a change in family size or composition, or it is needed as a reasonable accommodation.

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12-III.D. SECURITY DEPOSITS

MHA Policy

When a family transfers from one unit to another, the MHA will transfer their security deposit to the new unit. The tenant will be billed for any maintenance or others charges due for the "old" unit.

12-III.E. COST OF TRANSFER

The MHA must pay moving expenses to transfer a resident with a disability to an accessible unit as an accommodation for the resident's disability [Notice PIH 2010-26].

MHA Policy

The resident will bear all of the costs of transfer s/he requests. However, the MHA will bear the transfer costs when the transfer is done as a reasonable accommodation.

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12-III.F. HANDLING OF REQUESTS

MHA Policy

Residents requesting a transfer to another unit or development will be required to submit a written request for transfer.

In order to request the emergency transfer under VAWA, the resident will be required to submit an emergency transfer request form (HUD-5383) (Exhibit 16-4 of this ACOP). The MHA may, on a case-by-case basis, waive this requirement and accept a verbal request in order to expedite the transfer process. If the MHA accepts an individual's statement, the MHA will document acceptance of the statement in the individual's file in accordance with 16-VII.D. of this ACOP. Transfer requests under VAWA will be processed in accordance with the MHA's Emergency Transfer Plan (Exhibit 16-3). In case of a reasonable accommodation transfer, the MHA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, the MHA will consider the transfer request any time the resident indicates that an accommodation is needed whether or not a formal written request is submitted.

The MHA will respond by approving the transfer and putting the family on the transfer list, by denying the transfer, or by requiring more information or documentation from the family, such as documentation of domestic violence, dating violence, sexual assault, or stalking in accordance with section 16-VII.D of this ACOP.

If the family does not meet the "good record" requirements under Section 12-III.C., the manager will address the problem and, until resolved, the request for transfer will be denied.

The MHA will respond within ten (10) business days of the submission of the family's request. If the MHA denies the request for transfer, the family will be informed of its grievance rights.

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PART IV: TRANSFER PROCESSING

12-IV.A. OVERVIEW

Generally, families who request a transfer should be placed on a transfer list and processed in a consistent and appropriate order. The transfer process must be clearly auditable to ensure that residents do not experience inequitable treatment.

12-IV.B. TRANSFER LIST

MHA Policy

The MHA will maintain a centralized transfer list to ensure that transfers are processed in the correct order and that procedures are uniform across all properties.

Emergency transfers will not automatically go on the transfer list. Instead emergency transfers will be handled immediately, on a case by case basis. If the emergency cannot be resolved by a temporary accommodation, and the resident requires a permanent transfer, the family will be placed at the top of the transfer list.

Transfers will be processed in the following order:

1. Emergency transfers (hazardous maintenance conditions, VAWA)
2. High-priority transfers (verified medical condition, threat of harm or criminal activity, and reasonable accommodation)
3. Transfers to make accessible units available
4. Demolition, renovation, etc.
5. Occupancy standards
6. Other MHA-required transfers
7. Other tenant-requested transfers

Within each category, transfers will be processed in order of the date a family was placed on the transfer list, starting with the earliest date.

With the approval of the executive director, the MHA may, on a case-by-case basis, transfer a family without regard to its placement on the transfer list in order to address the immediate need of a family in crisis.

Demolition and renovation transfers will gain the highest priority as necessary to allow the MHA to meet the demolition or renovation schedule.

Transfers will take precedence over waiting list admissions.

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12-IV.C. TRANSFER OFFER POLICY

MHA Policy

Residents will receive one offer of a transfer.

When the transfer is required by the MHA, the refusal of that offer without good cause will result in lease termination.

When the transfer has been requested by the resident, the refusal of that offer without good cause will result in the removal of the family from the transfer list. In such cases, the family must wait six months to reapply for another transfer.

12-IV.D. GOOD CAUSE FOR UNIT REFUSAL

MHA Policy

Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

The family demonstrates to the MHA's satisfaction that accepting the unit offer will require an adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities.

The family demonstrates to the MHA's satisfaction that accepting the offer will place a family member's life, health, or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, risk assessments related to witness protection from a law enforcement agency, or documentation of domestic violence, dating violence, or stalking in accordance with section 16-VII.D of this ACOP. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption.

A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member.

The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move.

The unit has lead-based paint and the family includes children under the age of six.

The MHA will require documentation of good cause for unit refusals.

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12-IV.E. DECONCENTRATION

MHA Policy

If subject to deconcentration requirements, the MHA will consider its deconcentration goals when transfer units are offered. When feasible, families above the Established Income Range will be offered a unit in a development that is below the Established Income Range, and vice versa, to achieve the MHA's deconcentration goals. A deconcentration offer will be considered a "bonus" offer; that is, if a resident refuses a deconcentration offer, the resident will receive one additional transfer offer.

12-IV.F. REEXAMINATION POLICIES FOR TRANSFERS

MHA Policy

The reexamination date will be changed to the first of the month in which the transfer took place.

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Chapter 13

LEASE TERMINATIONS

INTRODUCTION

Either party to the dwelling lease agreement may terminate the lease in accordance with the terms of the lease. A public housing lease is different from a private dwelling lease in that the family's rental assistance is tied to their tenancy. When the family moves from their public housing unit, they lose their rental assistance. Therefore, there are additional safeguards to protect the family's tenancy in public housing.

Likewise, there are safeguards to protect HUD's interest in the public housing program. The MHA has the authority to terminate the lease because of the family's failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause. HUD regulations also specify when termination of the lease is mandatory by the MHA.

When determining MHA policy on terminations of the lease, the MHA must consider state and local landlord-tenant laws in the area where the MHA is located. Such laws vary from one location to another, and these variances may be either more or less restrictive than federal law or HUD regulation.

This chapter presents the policies that govern voluntary termination of the lease by the family and the mandatory and voluntary termination of the lease by the MHA. It is presented in four parts:

> Part I: Termination by Tenant. This part discusses the MHA requirements for voluntary termination of the lease by the family.
>
> Part II: Termination by MHA - Mandatory. This part describes circumstances when termination of the lease by the MHA is mandatory. This part also explains nonrenewal of the lease for noncompliance with community service requirements.
>
> Part III: Termination by MHA – Other Authorized Reasons. This part describes the MHA's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes MHAs to terminate. For some of these options HUD requires the MHA to establish policies and lease provisions for termination, but termination is not mandatory. For other options the MHA has full discretion whether to consider the options as just cause to terminate as long as the MHA policies are reasonable, nondiscriminatory, and do not violate state or local landlord-tenant law. This part also discusses the alternatives that the MHA may consider in lieu of termination, and the criteria the MHA will use when deciding what actions to take.
>
> Part IV: Notification Requirements. This part presents the federal requirements for disclosure of criminal records to the family prior to termination, the HUD requirements and MHA policies regarding the timing and content of written notices for lease termination and eviction, and notification of the post office when eviction is due to criminal activity. This part also discusses record keeping related to lease termination.

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PART I: TERMINATION BY TENANT

13-I.A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)]

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the property site office or the MHA central office or sent by pre-paid first-class mail, properly addressed.

MHA Policy

If a family desires to move and terminate their tenancy with the MHA, they must give at least 30 calendar days advance written notice to the MHA of their intent to vacate. When a family must give less than 30 days notice due to circumstances beyond their control the MHA, at its discretion, may waive the 30 day requirement.

The notice of lease termination must be signed by the head of household, spouse, or cohead.

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PART II: TERMINATION BY MHA – MANDATORY

13-II.A. OVERVIEW

HUD requires mandatory termination of the lease for certain actions or inactions of the family. There are other actions or inactions of the family that constitute *grounds* for lease termination, but the lease termination is not mandatory. The MHA must establish policies for termination of the lease in these cases where termination is optional for the MHA.

For those tenant actions or failures to act where HUD requires termination, the MHA has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires the MHA to terminate the lease.

13-II.B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]

The MHA must terminate the lease if any family member fails to sign and submit any consent form s/he is required to sign for any reexamination. See Chapter 7 for a complete discussion of consent requirements.

13-II.C. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]

The MHA must terminate the lease 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, resulting in no eligible family members; or (3) a family member, as determined by the MHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3), 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.

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13-II.D. FAILURE TO DISCLOSE AND DOCUMENT SOCIAL SECURITY NUMBERS [24 CFR 5.218(c), 24 CFR 960.259(a)(3), Notice PIH 2018-24]

The MHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the MHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the MHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the MHA determined the family to be noncompliant.

MHA Policy

The MHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

See Chapter 7 for a complete discussion of documentation and certification requirements.

13-II.E. FAILURE TO ACCEPT THE MHA'S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]

The MHA must terminate the lease if the family fails to accept the MHA's offer of a lease revision to an existing lease, provided the MHA has done the following:

- The revision is on a form adopted by the MHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- The MHA has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- The MHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to MHA policies for offering lease revisions.

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13-II.F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(l)(5)(i)(A)]

The MHA must immediately terminate the lease if the MHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

See Part 13-III.B. below for the HUD definition of *premises.*

13-II.G. LIFETIME REGISTERED SEX OFFENDERS [Notice PIH 2012-28]

Should a MHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the MHA must immediately terminate assistance for the household member.

In this situation, the MHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the MHA must terminate assistance for the household.

13-II.H. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]

The MHA is prohibited from renewing the lease at the end of the 12 month lease term when the family fails to comply with the community service requirements as described in Chapter 11.

13-II.I. DEATH OF A SOLE FAMILY MEMBER [Notice PIH 2012-4]

The MHA must immediately terminate the lease following the death of the sole family member.

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PART III: TERMINATION BY MHA – OTHER AUTHORIZED REASONS

13-III.A. OVERVIEW

Besides requiring MHAs to terminate the lease under the circumstances described in Part II, HUD requires the MHA to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse, and certain household obligations stated in the regulations. While these provisions for lease termination must be in the lease agreement, HUD does not require MHAs to terminate for such violations in all cases. The MHA has the discretion to consider circumstances surrounding the violation or, in applicable situations, whether the offending household member has entered or completed rehabilitation, and the MHA may, as an alternative to termination, require the exclusion of the culpable household member. The MHA must adopt policies concerning the use of these options.

In addition, HUD authorizes MHAs to terminate the lease for other grounds, but for only those grounds that constitute serious or repeated violations of material terms of the lease or for other good cause. The MHA must develop policies pertaining to what constitutes serious or repeated lease violations, and other good cause, based upon the content of the MHA lease. In the development of the terms of the lease, the MHA must consider the limitations imposed by state and local landlord-tenant law, as well as HUD regulations and federal statutes. Because of variations in state and local landlord-tenant law, and because HUD affords MHAs wide discretion in some areas, a broad range of policies could be acceptable.

The MHA also has the option to terminate the tenancies of certain over-income families.

The MHA may consider alternatives to termination and must establish policies describing the criteria the MHA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps the MHA must take when terminating a family's lease.

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13-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(l)(5)]

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations. Although the provisions are required, HUD does not require MHAs to terminate for such violations in all cases, therefore MHA policies are needed.

***Definitions* [24 CFR 5.100]**

The following definitions will be used for this and other parts of this chapter:

Affiliated individual is defined in section 16-VII.B.

Covered person means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.

Dating violence is defined in section 16-VII.B.

Domestic violence is defined in section 16-VII.B.

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].

Drug-related criminal activity means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug.

Guest means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

Household means the family and MHA-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD-50058, Instruction Booklet, p. 65].

Other person under the tenant's control means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control*.

Premises means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

Sexual assault is defined in section 16-VII.B.

Stalking is defined in section 16-VII.B.

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

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Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)]

The lease must provide that drug-related criminal activity engaged in on or off the premises by the tenant, member of the tenant's household or guest, or any such activity engaged in on the premises by any other person under the tenant's control is grounds for termination.

MHA Policy

The MHA will terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control.

The MHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related 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 the lease, the MHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the MHA may, on a case-by-case basis, choose not to terminate the lease.

Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)]

The lease must provide that a MHA may evict a family when the MHA determines that a household member is illegally using a drug or that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

MHA Policy

The MHA will terminate the lease when the MHA determines that a household member is illegally using a drug or the MHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous six months.

The MHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.

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 the lease, the MHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the MHA may, on a case-by-case basis, choose not to terminate the lease.

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Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)]

The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including MHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

MHA Policy

The MHA will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including MHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises.

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

The MHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the 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 the lease, the MHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the MHA may, on a case-by-case basis, choose not to terminate the lease.

Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]

MHAs must establish standards that allow termination of tenancy if the MHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

MHA Policy

The MHA will terminate the lease if the MHA determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous six months.

The MHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the 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 the lease, the MHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the MHA may, on a case-by-case basis, choose not to terminate the lease.

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Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]

MHAs must establish standards that allow termination of tenancy if the MHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

MHA Policy

The MHA will terminate the lease if the MHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

The MHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

In making its decision to terminate the lease, the MHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the MHA may, on a case-by-case basis, choose not to terminate the lease.

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Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)]

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered to be serious or repeated violations of the lease and grounds for termination. 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 [24 CFR 5.2005(c)(1)].

MHA Policy

The MHA will terminate the lease for the following violations of tenant obligations under the lease:

Failure to make payments due under the lease, including nonpayment of rent (see Chapter 8 for details pertaining to lease requirements for payments due);

Repeated late payment of rent or other charges. Four late payments within a 12 month period shall constitute a repeated late payment.

Failure to fulfill the following household obligations:

Not to assign the lease or to sublease the dwelling unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

Not to provide accommodations for boarders or lodgers

To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose

To abide by necessary and reasonable regulations promulgated by the MHA for the benefit and well-being of the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease

To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety

To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition

To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner

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To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators

To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project

To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest

To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition

In making its decision to terminate the lease, the MHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the MHA may, on a case-by-case basis, choose not to terminate the lease.

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13-III.C. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(l)(2) and (5)(ii)(B)]

HUD authorizes MHAs to terminate the lease for reasons other than those described in the previous sections. These reasons are referred to as "other good cause."

Other Good Cause [24 CFR 966.4(l)(2)(ii)(B) and (C)]

HUD regulations state that the MHA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit the MHA to only those examples. The Violence against Women Reauthorization Act of 2013 explicitly prohibits MHAs from considering incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking as "other good cause" for terminating the assistance, tenancy, or occupancy rights of the victim or threatened victim of such violence [24 CFR 5.2005(c)(1)].

MHA Policy

The MHA will terminate the lease for the following reasons.

Fugitive Felon or Parole Violator. If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under federal or state law.

Persons subject to sex offender registration requirement. If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.

Discovery of facts after admission to the program that would have made the tenant ineligible

Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with a reexamination of income

Failure to furnish such information and certifications regarding family composition and income as may be necessary for the MHA to make determinations with respect to rent, eligibility, and the appropriateness of the dwelling unit size

Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the MHA that such a dwelling unit is available

Failure to permit access to the unit by the MHA after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists

Failure to promptly inform the MHA of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within 10 business days of the event.

Failure to abide by the provisions of the MHA pet policy

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

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If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

If a household member has engaged in or threatened violent or abusive behavior toward MHA personnel.

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

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate the lease, the MHA will consider alternatives as described in Section 13-III.D and other factors described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the MHA may, on a case-by-case basis, choose not to terminate the lease.

Family Absence from Unit [24 CFR 982.551(i)]

It is reasonable that the family may be absent from the public housing unit for brief periods. However, the MHA needs a policy on how long the family may be absent from the unit. Absence in this context means that no member of the family is residing in the unit.

MHA Policy

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

The family must promptly notify the MHA 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. In such a case promptly means within 10 business days of the start of the extended absence.

If a family is absent from the public housing unit for more than 180 consecutive days, and the family does not adequately verify that they are living in the unit, the MHA will terminate the lease for other good cause.

Abandonment of the unit. If the family appears to have vacated the unit without giving proper notice, the MHA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, the MHA will secure the unit immediately to prevent vandalism and other criminal activity.

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Over-Income Families [24 CFR 960.261; FR Notice 7/26/18; Notice PIH 2019-11]

The Housing Opportunity Through Modernization Act (HOTMA) of 2016 placed an income limitation on public housing tenancies. The over-income requirement states that after a family's adjusted income has exceeded 120 percent of area median income (AMI) (or a different limitation established by the secretary) for two consecutive years, the MHA must either terminate the family's tenancy within six months of the determination, or charge the family a monthly rent that is the higher of the applicable fair market rent (FMR) or the amount of monthly subsidy for the unit, including amounts from the operating and capital funds, as determined by regulations.

Notice PIH 2019-11 also requires that MHAs publish over-income limits in their ACOP and update them no later than 60 days after HUD publishes new income limits each year. The over-income limit is calculated by multiplying the very low-income limit (VLI) by 2.4, as adjusted for family size.

MHAs also have discretion, under 24 CFR 960.261, to adopt policies allowing termination of tenancy for families whose income exceeds the limit for program eligibility. Such policies would exempt families participating in the Family Self-Sufficiency (FSS) program or currently receiving the earned income disallowance.

MHA Policy

At annual or interim reexamination, if a family's adjusted income exceeds the applicable over-income limit, the MHA will document the family file and begin tracking the family's over-income status.

If one year after the applicable annual or interim reexamination the family's income continues to exceed the applicable over-income limit, the MHA will notify the family in writing that their income has exceeded the over-income limit for one year, and that if the family continues to be over-income for 12 consecutive months, the family will be subject to the MHA's over-income policies.

If two years after the applicable annual or interim reexamination the family's income continues to exceed the applicable over-income limit, the MHA will charge the family a rent that is the higher of the applicable fair market rent (FMR) or the amount of monthly subsidy for the unit. The MHA will notify the family in writing of their new rent amount. The new rent amount will be effective 30 days after the MHA's written notice to the family.

If, at any time, an over-income family experiences a decrease in income, the family may request an interim redetermination of rent in accordance with MHA policy. If, as a result, the previously over-income family is now below the over-income limit, the family is no longer subject to over-income provisions as of the effective date of the recertification. The MHA will notify the family in writing that over-income policies no longer apply to them. If the family's income later exceeds the over-income limit again, the family is entitled to a new two-year grace period.

The MHA will begin tracking over-income families once these policies have been adopted, but no later than March 24, 2019.

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The MHA will not evict or terminate the tenancies of families whose income exceeds the income limit for program eligibility as described at 24 CFR 960.261.

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The MHA will rely on the following over-income limits. These numbers will be updated within 60 days of HUD publishing new income limits each year and will be effective for all annual and interim reexaminations once these policies have been adopted.

Family Size	1	2	3	4	5	6	7	8
Over-Income Limit								

For families larger than 8 persons, the over-income limit will be calculated by multiplying the applicable very-low income limit by 2.4.

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13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY

Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)]

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that the MHA may consider exclusion of the culpable household member. Such an alternative can be used for any other reason where such a solution appears viable in accordance with MHA policy.

Additionally, under the Violence against Women Reauthorization Act of 2013, the MHA may bifurcate a lease in order to terminate the tenancy of an individual who is a tenant or lawful occupant of a unit and engages in criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking.

MHA Policy

The MHA will consider requiring the tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

As a condition of the family's continued occupancy, the head of household must certify that the culpable household 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 household member's current address upon MHA request.

Repayment of Family Debts

MHA Policy

If a family owes amounts to the MHA, as a condition of continued occupancy, the MHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the MHA of the amount owed. See Chapter 16 for policies on repayment agreements.

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13-III.E. CRITERIA FOR DECIDING TO TERMINATE TENANCY

A MHA that has grounds to terminate a tenancy is not required to do so, except as explained in Part II of this chapter, and may consider all of the circumstances relevant to a particular case before making a decision.

Evidence [24 CFR 982.553(c)]

For criminal activity, HUD permits the MHA to terminate the lease 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, and without satisfying the standard of proof used for a criminal conviction.

MHA Policy

The MHA will use 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.

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Consideration of Circumstances [24 CFR 966.4(l)(5)(vii)(B)]

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that the MHA may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease.

Such relevant circumstances can also be considered when terminating the lease for any other reason.

MHA Policy

The MHA will consider the following facts and circumstances before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:

- The seriousness of the offending action, especially with respect to how it would affect other residents' safety or property
- The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or (as discussed further in section 13-III.F) a victim of domestic violence, dating violence, sexual assault, or stalking
- The effects that the eviction will have on other family members who were not involved in the action or failure to act
- The effect on the community of the termination, or of the MHA's failure to terminate the tenancy
- The effect of the MHA's decision on the integrity of the public housing program
- The demand for housing by eligible families who will adhere to lease responsibilities
- The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action
- 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

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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 MHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The MHA may also consider:

- Any statements made by witnesses or the participant not included in the police report
- Whether criminal charges were filed
- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal
- Any other evidence relevant to determining whether or not the participant engaged in disqualifying activity

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.

In the case of program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family

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Consideration of Rehabilitation [24 CFR 966.4(l)(5)(vii)(D)]

HUD authorizes MHAs to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

MHA Policy

In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, the MHA will consider whether such household member has successfully completed a supervised drug or alcohol rehabilitation program.

For this purpose the MHA will require the tenant to submit evidence of the household member's successful completion of a supervised drug or alcohol rehabilitation program.

Reasonable Accommodation [24 CFR 966.7]

If the family includes a person with disabilities, the MHA's decision to terminate the family's lease is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

MHA Policy

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, the MHA will determine whether the behavior is related to the disability. If so, upon the family's request, the MHA will determine whether alternative measures are appropriate as a reasonable accommodation. The MHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed lease termination. See Chapter 2 for a discussion of reasonable accommodation.

Nondiscrimination Limitation [24 CFR 966.4(l)(5)(vii)(F)]

The MHA's eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

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13-III.F. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

This section addresses the protections against termination of tenancy that the Violence against Women Act of 2013 (VAWA) provides for public housing residents who are victims of domestic violence, dating violence, sexual assault, or stalking. For general VAWA requirements and MHA policies pertaining to notification, documentation, and confidentiality, see section 16-VII of this ACOP, where definitions of key VAWA terms are also located.

VAWA Protections against Termination [24 CFR 5.2005(c)]

VAWA provides that no person may deny assistance, tenancy, or occupancy rights to public housing to a tenant on the basis or as a direct result of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or affiliated individual is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking [FR Notice 8/6/13].

VAWA further provides that incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed either as serious or repeated violations of the lease by the victim or threatened victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence [24 CFR 5.2005(c)(1), FR Notice 8/6/13].

Limits on VAWA Protections [24 CFR 5.2005(d) and (e), FR Notice 8/6/13]

While VAWA prohibits a MHA from using domestic violence, dating violence, sexual assault, or stalking as the cause for a termination or eviction action against a public housing tenant who is the victim of the abuse, the protections it provides are not absolute. Specifically:

- VAWA does not limit a MHA's otherwise available authority to terminate assistance to or evict a victim for lease violations not premised on an act of domestic violence, dating violence, sexual assault, or stalking providing that the MHA does not subject the victim to a more demanding standard than the standard to which it holds other tenants.
- VAWA does not limit a MHA's authority to terminate the tenancy of any public housing tenant if the MHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated.

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

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In order to demonstrate an actual and imminent threat, the MHA must have objective evidence of words, gestures, actions, or other indicators. Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a MHA to terminate the victim's assistance "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" [24 CFR 5.2005(d)(3)]. Additionally, HUD regulations state that restrictions "predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents" [24 CFR 5.2005(d)(3)].

MHA Policy

In determining whether a public housing tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the MHA 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, transferring the victim to another unit, or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the tenant wishes to contest the MHA's determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the grievance hearing or in a court proceeding.

Documentation of Abuse [24 CFR 5.2007]

MHA Policy

When an individual facing termination of tenancy for reasons related to domestic violence, dating violence, sexual assault, or stalking claims protection under VAWA, the MHA will request in writing that the individual provide documentation supporting the claim in accordance with the policies in section 16-VII.D of this ACOP.

The MHA 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 the MHA will document the waiver in the individual's file.

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Terminating or Evicting a Perpetrator of Domestic Violence

Although VAWA provides protection from termination for victims of domestic violence, it does not provide such protection for perpetrators. In fact, VAWA gives the MHA the explicit authority to bifurcate a lease, or remove a household member from a lease, "in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing" [FR Notice 8/6/13]. Moreover, HUD regulations impose on the MHA the obligation to consider lease bifurcation in any circumstances involving domestic violence, dating violence, or stalking [24 CFR 966.4(e)(9)].

Specific lease language affirming the MHA's authority to bifurcate a lease is not necessary, and the authority supersedes any local, state, or federal law to the contrary. However, if the MHA chooses to exercise its authority to bifurcate a lease, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law for eviction, lease termination, or termination of assistance. This means that the MHA must follow the same rules when terminating or evicting an individual as it would when terminating or evicting an entire family [FR Notice 3/16/07]. However, perpetrators should be given no more than 30 days' notice of termination in most cases [Notice PIH 2017-08].

MHA Policy

The MHA will bifurcate a family's lease and terminate the tenancy of a family member if the MHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the tenancy or program assistance of the remaining, nonculpable family members.

In making its decision, the MHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted to the MHA by the victim in accordance with this section and section 16-VII.D. The MHA will also consider the factors in section 13.III.E. Upon such consideration, the MHA may, on a case-by-case basis, choose not to bifurcate the lease and terminate the tenancy of the culpable family member.

If the MHA does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with the lease, applicable law, and the policies in this ACOP. If the person removed from the lease was the only tenant eligible to receive assistance, the MHA must provide any remaining tenant a chance to establish eligibility for the unit. If the remaining tenant cannot do so, the MHA must provide the tenant reasonable time to find new housing or to establish eligibility for another housing program covered by VAWA 2013.

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PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING

13-IV.A. OVERVIEW

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. This part discusses those requirements and the specific requirements that precede and follow termination for certain criminal activities which are addressed in the regulations. This part also discusses specific requirements pertaining to the actual eviction of families and record keeping.

13-IV.B. CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]

HUD authorizes MHAs to conduct criminal records checks on public housing residents for lease enforcement and eviction. MHA policy determines when the MHA will conduct such checks.

MHA Policy

The MHA will conduct criminal records checks when it has come to the attention of the MHA, either from local law enforcement or by other means, that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information. In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

The MHA may not pass along to the tenant the costs of a criminal records check.

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13-IV.C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)]

In conducting criminal records checks, if the MHA uses the authority of 24 CFR 5.903 and 5.905 to obtain such information, certain protections must be afforded the tenant before any adverse action is taken. In such cases if the MHA obtains criminal records information from a state or local agency showing that a household member has been convicted of a crime, or is subject to a sex offender registration requirement, relevant to lease enforcement or eviction, the MHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

MHA Policy

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the MHA will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

The family will be given 10 business days from the date of the MHA notice, to dispute the accuracy and relevance of the information. If the family does not contact the MHA to dispute the information within that 10 business day period, the MHA will proceed with the termination action.

Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.

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13-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3)]

Form, Delivery, and Content of the Notice

Notices of lease termination must be in writing. The notice must state the specific grounds for termination, the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine MHA documents directly relevant to the termination or eviction. If the MHA does not make the documents available for examination upon request by the tenant, the MHA may not proceed with the eviction [24 CFR 996.4(m)].

When the MHA is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with the MHA's grievance procedure. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed.

When the MHA is not required to offer the resident an opportunity for a grievance hearing because HUD has made a due process determination and the lease termination is for criminal activity that threatens health, safety or right to peaceful enjoyment or for drug-related criminal activity, the notice of lease termination must state that the tenant is not entitled to a grievance hearing on the termination. It must specify the judicial eviction procedure to be used by the MHA for eviction of the tenant, and state that HUD has determined that the eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations. The notice must also state whether the eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the MHA, or for a drug-related criminal activity on or off the premises.

MHA Policy

The MHA will attempt to deliver notices of lease termination directly to the tenant or an adult member of the household. If such attempt fails, the notice will be sent by first-class mail the same day.

All notices of lease termination will include a copy of the forms HUD-5382 and HUD-5380 to accompany the termination notice. Any tenant who claims that the cause for termination involves domestic violence, dating violence, sexual assault, or stalking of which the tenant or affiliated individual of the tenant is the victim will be given the opportunity to provide documentation in accordance with the policies in sections 13-III.F and 16-VII.D.

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Timing of the Notice [24 CFR 966.4(l)(3)(i)]

The MHA must give written notice of lease termination of:

- 14 calendar days in the case of failure to pay rent
- A reasonable period of time considering the seriousness of the situation (but not to exceed 30 calendar days)

  If the health or safety of other residents, MHA employees, or persons residing in the immediate vicinity of the premises is threatened

  If any member of the household has engaged in any drug-related criminal activity or violent criminal activity

  If any member of the household has been convicted of a felony
- 30 calendar days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply

  MHA Policy

  The MHA will give written notice of 14 calendar days for nonpayment of rent. For all other lease terminations the MHA will give 30 days written notice or, if state or local law allows less than 30 days, such shorter notice will be given.

The Notice to Vacate that may be required under state or local law may be combined with or run concurrently with the notice of lease termination.

Notice of Nonrenewal Due to Community Service Noncompliance [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]

When the MHA finds that a family is in noncompliance with the community service requirement, the tenant and any other noncompliant resident must be notified in writing of this determination. Notices of noncompliance will be issued in accordance with the requirements and policies in Section 11-I.E.

MHA Policy

If after receiving a notice of initial noncompliance the family does not request a grievance hearing, or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement, and is still in noncompliance after being provided the 12-month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Section 11-I.E. and will also serve as the notice of termination of tenancy.

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Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family's eligibility for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, the family's right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and the family's right to request an informal hearing with the MHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for the MHA's informal hearing procedures.

13-IV.E. EVICTION [24 CFR 966.4(l)(4) and 966.4(m)]

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 MHA may only evict the tenant from the unit by instituting a court action, unless the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties.

> MHA Policy
>
> When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, the MHA will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.
>
> If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, the MHA will seek the assistance of the court to remove the family from the premises as per state and local law.

The MHA may not proceed with an eviction action if the MHA has not made available the documents to be used in the case against the family, and has not afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(l)(3) and (m).

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13-IV.F. NOTIFICATION TO POST OFFICE [24CFR 966.4(l)(5)(iii)(B)]

When the MHA evicts an individual or family for criminal activity, including drug-related criminal activity, the MHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

13-IV.G. RECORD KEEPING

For more information concerning general record keeping, see Chapter 16.

MHA Policy

A written record of every termination and/or eviction will be maintained by the MHA at the development where the family was residing, and will contain the following information:

Name of resident, number and identification of unit occupied

Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently

Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail (other than any criminal history reports obtained solely through the authorization provided in 24 CFR 5.903 and 5.905)

Date and method of notifying the resident

Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions

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Chapter 14

GRIEVANCES AND APPEALS

INTRODUCTION

This chapter discusses grievances and appeals pertaining to MHA actions or failures to act that adversely affect public housing applicants or residents. The policies are discussed in the following three parts:

> Part I: Informal Hearings for Public Housing Applicants. This part outlines the requirements and procedures for informal hearings for public housing applicants.
>
> Part II: Informal Hearings with Regard to Noncitizens. This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and tenant grievances.
>
> Part III: Grievance Procedures for Public Housing Residents. This part outlines the requirements and procedures for handling grievances for public housing residents.

Note that this chapter is not the MHA's grievance procedure. The grievance procedure is a document separate from the ACOP. This chapter of the ACOP provides the policies that drive the grievance procedure. A sample grievance procedure is provided as Exhibit 14-1. However, please note that the procedure provided is only a sample and is designed to match up with the default policies in the model ACOP. As such, the MHA would need to modify accordingly should any alternative policy decisions be adopted.

PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS

14-I.A. OVERVIEW

When the MHA makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except with regard to citizenship status, to be covered in Part II). This part discusses the MHA policies necessary to respond to applicant appeals through the informal hearing process.

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14-I.B. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58]

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program, but is not yet a tenant in the program. Informal hearings are intended to provide a means for an applicant to dispute a determination of ineligibility for admission to a project [24 CFR 960.208(a)]. Applicants to public housing are not entitled to the same hearing process afforded tenants under the MHA grievance procedures [24 CFR 966.53(a) and PH Occ GB, p. 58].

Informal hearings provide applicants the opportunity to review the reasons for denial of admission and to present evidence to refute the grounds for denial.

Use of Informal Hearing Process

While the MHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, the MHA could make the informal hearing process available to applicants who wish to dispute other MHA actions that adversely affect them.

> MHA Policy
>
> The MHA will only offer informal hearings to applicants for the purpose of disputing denials of admission.

Notice of Denial [24 CFR 960.208(a)]

The MHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for the MHA decision, and must also state that the applicant may request an informal hearing to dispute the decision. The notice must describe how to obtain the informal hearing.

When denying eligibility for admission, the MHA must provide the family a notice of VAWA rights (form HUD-5380) as well as the HUD VAWA self-certification form (form HUD-5382) in accordance with the Violence against Women Reauthorization Act of 2013, and as outlined in 16-VII.C. The notice and self-certification form must accompany the written notification of the denial of eligibility determination.

Prior to notification of denial based on information obtained from criminal or sex offender registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial. See Section 3-III.G for details concerning this requirement.

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Scheduling an Informal Hearing

MHA Policy

A request for an informal hearing must be made in writing and delivered to the MHA 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 MHA's notification of denial of admission.

The MHA will schedule and send written notice of the informal hearing within 10 business days of the family's request.

Conducting an Informal Hearing [PH Occ GB, p. 58]

MHA Policy

The informal hearing will be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant will be provided an opportunity to present written or oral objections to the decision of the MHA.

The person conducting the informal hearing will make a recommendation to the MHA, but the MHA is responsible for making the final decision as to whether admission should be granted or denied.

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Informal Hearing Decision [PH Occ GB, p. 58]

MHA Policy

The MHA will notify the applicant of the MHA's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the MHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice

The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in MHA policy, then the decision to deny assistance will be overturned. See Chapter 3 for a detailed discussion of the grounds for applicant denial.

The validity of the evidence. The MHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, the MHA will uphold the decision to deny admission.

If the facts prove the grounds for denial, and the denial is discretionary, the MHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

The MHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed, with return receipt requested, within 10 business days of the informal hearing, to the applicant and his or her representative, if any.

If the informal hearing decision overturns the denial, processing for admission will resume.

If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.

Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and the MHA must consider such accommodations. The MHA must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person's disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

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PART II: INFORMAL HEARINGS WITH REGARD TO NONCITIZENS

14-II.A. 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. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the MHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the MHA 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 13, the notice of denial or termination of assistance for noncitizens must advise the family of any of the following that apply:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the MHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

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United States Citizenship and Immigration Services Appeal Process [24 CFR 5.514(e)]

When the MHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the MHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the MHA with a copy of the written request for appeal and proof of mailing.

MHA Policy

The MHA 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 the MHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the MHA, of its decision. When the USCIS notifies the MHA of the decision, the MHA must notify the family of its right to request an informal hearing.

MHA Policy

The MHA 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.

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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, an applicant family may request that the MHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the MHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

Informal Hearing Officer

The MHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

Evidence

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the MHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

> MHA Policy
>
> The family will be allowed to copy any documents related to the hearing at a cost of $.25 per page. The family must request discovery of MHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the MHA, and to confront and cross-examine all witnesses on whose testimony or information the MHA relies.

Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to request an interpreter. The MHA is obligated to provide a competent interpreter, free of charge, upon request. The family may also or instead provide its own interpreter, at the expense of the family.

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. The MHA may, but is not required to provide a transcript of the hearing.

> MHA Policy
>
> The MHA will not provide a transcript of an audio taped informal hearing.

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Hearing Decision

The MHA must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision.

Retention of Documents [24 CFR 5.514(h)]

The MHA must retain for a minimum of 5 years the following documents that may have been submitted to the MHA by the family, or provided to the MHA as part of the USCIS appeal or the MHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

Informal Hearing Procedures for Residents [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, a resident family may request that the MHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the MHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.

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PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS

14-III.A. REQUIREMENTS [24 CFR 966.52]

MHAs must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any MHA action or failure to act involving the lease or MHA policies which adversely affect their rights, duties, welfare, or status. The MHA must not only meet the minimal procedural due process requirements provided under the regulations, but must also meet any additional requirements imposed by local, state or federal law.

The MHA grievance procedure must be included in, or incorporated by reference in, the lease.

MHA Policy

The MHA grievance procedure will be incorporated by reference in the tenant lease.

The MHA must provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the MHA grievance procedure, and provide an opportunity to present written comments. Comments submitted must be considered by the MHA before adoption of any changes to the grievance procedure by the MHA.

MHA Policy

Residents and resident organizations will have 30 calendar days from the date they are notified by the MHA of any proposed changes in the MHA grievance procedure, to submit written comments to the MHA.

The MHA must furnish a copy of the grievance procedure to each tenant and to resident organizations.

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14-III.B. DEFINITIONS [24 CFR 966.53; 24 CFR 966.51(a)(2)(i)]

There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage. These terms are as follows:

- **Grievance** – any dispute which a tenant may have with respect to MHA action or failure to act in accordance with the individual tenant's lease or MHA regulations which adversely affect the individual tenant's rights, duties, welfare or status
- **Complainant** – any tenant whose grievance is presented to the MHA or at the project management office
- **Due Process Determination** – a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit
- **Expedited Grievance** – a procedure established by the MHA for any grievance or termination that involves:
  - Any criminal activity that threatens the health, safety, or right to peaceful enjoyment or the MHA's public housing premises by other residents or employees of the MHA; or
  - Any drug-related criminal activity on or off the premises
- **Elements of Due Process** – an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
  - Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
  - Right of the tenant to be represented by counsel
  - Opportunity for the tenant to refute the evidence presented by the MHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have
  - A decision on the merits
- **Hearing Officer** – an impartial person or selected by the MHA, other than the person who made or approved the decision under review, or a subordinate of that person. The individual or individuals do not need legal training.
- **Tenant** – the adult person (or persons) (other than a live-in aide)
  - Who resides in the unit, and who executed the lease with the MHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
  - Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit
- **Resident Organization** – includes a resident management corporation

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14-III.C. APPLICABILITY [24 CFR 966.51]

Grievances could potentially address most aspects of a MHA's operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual tenant issues relating to the MHA. It is not applicable to disputes between tenants not involving the MHA. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of the MHA.

If HUD has issued a due process determination, a MHA may exclude from the MHA grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the MHA;
- Any violent or drug-related criminal activity on or off such premises; or
- Any criminal activity that resulted in felony conviction of a household member

In states without due process determinations, MHAs must grant opportunity for grievance hearings for all lease terminations, regardless of cause, with the following exception: MHAs may use expedited grievance procedures for the excluded categories listed above. These expedited grievance procedures are described in Section 14-III.E. below.

If HUD has issued a due process determination, the MHA may evict through the state/local judicial eviction procedures. In this case, the MHA is not required to provide the opportunity for a hearing under the MHA's grievance procedure as described above.

> MHA Policy
>
> The MHA is located in a HUD-declared due process state. Therefore, the MHA will not offer grievance hearings for lease terminations involving criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the MHA, for violent or drug-related criminal activity on or off the premises, or for any criminal activity that resulted in felony conviction of a household member.

See Chapter 13 for related policies on the content of termination notices.

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14-III.D. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]

HUD regulations state that any grievance must be personally presented, either orally or in writing, to the MHA office or to the office of the housing development in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

MHA Policy

The MHA will accept requests for an informal settlement of a grievance either orally or in writing, to the MHA office within 10 business days of the grievable event. Within 10 business days of receipt of the request the MHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.

If a tenant fails to attend the scheduled meeting without prior notice, the MHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

HUD regulations require that a summary of such discussion will be prepared within a reasonable time and one copy will be given to the tenant and one retained in the MHA's tenant file.

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and will specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

MHA Policy

The MHA will prepare a summary of the informal settlement within five business days; one copy to be given to the tenant and one copy to be retained in the MHA's tenant file.

For MHAs who have the option to establish an expedited grievance procedure, and who exercise this option, the informal settlement of grievances is not applicable to those grievances for which the expedited grievance procedure applies.

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14-III.E. PROCEDURES TO OBTAIN A HEARING

Requests for Hearing and Failure to Request

MHA Policy

The resident must submit a written request for a grievance hearing to the MHA within five business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, the MHA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest the MHA's action in disposing of the complaint in an appropriate judicial proceeding.

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Scheduling of Hearings [24 CFR 966.56(a)]

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer promptly for a time and place reasonably convenient to both the complainant and the MHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate MHA official.

MHA Policy

Within 10 business days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and the MHA.

The MHA may wish to permit the tenant to request to reschedule a hearing for good cause.

MHA Policy

The tenant may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the MHA may request documentation of the "good cause" prior to rescheduling the hearing.

Expedited Grievance Procedure [24 CFR 966.52(a)]

The MHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the MHA;
- Any drug-related criminal activity on or near such premises; or
- Any criminal activity that resulted in felony conviction of a household member.

In such expedited grievances, the informal settlement of grievances as discussed in 14-III.D is not applicable.

The MHA may adopt special procedures concerning expedited hearings, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

MHA Policy

The MHA will not offer expedited grievance procedures.

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14-III.F. SELECTION OF HEARING OFFICER [24 CFR 966.53(e)]

The grievance hearing must be conducted by an impartial person or persons appointed by the MHA, other than the person who made or approved the MHA action under review, or a subordinate of such person. The MHA must describe their policies for selection of a hearing officer in their lease.

MHA Policy

MHA grievance hearings will be conducted by a single hearing officer and not a panel.

The MHA will appoint a staff member who was not involved in the decision under appeal. If a designated staff member (such as the program manager) was involved in the decision, or is a subordinate of such person, an alternate hearing officer will be selected.

The MHA may select designated staff members who were not involved in the decision under appeal in certain circumstances, such as appeals involving discrimination claims or denials of requests for reasonable accommodations.

MHAs must describe their policies for selection of a hearing officer in their lease forms. Changes to the public housing lease are subject to a 30-day comment period [24 CFR 966.4].

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14-III.G. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56]

Rights of Complainant [24 CFR 966.56(b)]

The complainant will be afforded a fair hearing. This includes:

- The opportunity to examine before the grievance hearing any MHA documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant's expense. If the MHA does not make the document available for examination upon request by the complainant, the MHA may not rely on such document at the grievance hearing.

  MHA Policy

  The tenant will be allowed to copy any documents related to the hearing at a cost of $.25 per page. The family must request discovery of MHA documents no later than 12:00 p.m. on the business day prior to the hearing.

- The right to be represented by counsel or other person chosen to represent the tenant, and to have such person make statements on the tenant's behalf.

  MHA Policy

  Hearings may be attended by the following applicable persons:

  A MHA representative(s) and any witnesses for the MHA

  The tenant and any witnesses for the tenant

  The tenant's counsel or other representative

  Any other person approved by the MHA as a reasonable accommodation for a person with a disability

- The right to a private hearing unless the complainant requests a public hearing.
- The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the MHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the MHA or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

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Failure to Appear [24 CFR 966.56(c)]

If the complainant or the MHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for no more than five business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and the MHA must be notified of the determination by the hearing officer: Provided, That a determination that the complainant has waived his/her right to a hearing will not constitute a waiver of any right the complainant may have to contest the MHA's disposition of the grievance in an appropriate judicial proceeding.

There may be times when a complainant does not appear due to unforeseen circumstances which are out of their control and are no fault of their own.

MHA Policy

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the tenant appears within 30 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact the MHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or it is needed as a reasonable accommodation for a person with disabilities.

"Good cause" is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family.

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General Procedures [24 CFR 966.56(d), (e)]

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the MHA must sustain the burden of justifying the MHA action or failure to act against which the complaint is directed [24 CFR 966.56(d)].

The hearing is conducted informally by the hearing officer. The MHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint, and to question any witnesses.

MHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

Oral evidence: the testimony of witnesses

Documentary evidence: a writing which is relevant to the case, for example, a letter written to the MHA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.

Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

Real evidence: A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If the MHA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine MHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of the MHA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

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The complainant or the MHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript [24 CFR 966.56(e)].

MHA Policy

If the complainant would like the MHA to record the proceedings by audiotape, the request must be made to the MHA by 12:00 p.m. on the business day prior to the hearing.

The MHA will consider that an audio tape recording of the proceedings is a transcript.

Accommodations of Persons with Disabilities [24 CFR 966.56(f)]

The MHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

See Chapter 2 for a thorough discussion of the MHA's responsibilities pertaining to reasonable accommodation.

Limited English Proficiency (24 CFR 966.56(g)

The MHA must comply with HUD's LEP Final Rule in providing language services throughout the grievance process.

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14-III.H. DECISION OF THE HEARING OFFICER [24 CFR 966.57]

The hearing officer must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the decision must be sent to the complainant and the MHA. The MHA must retain a copy of the decision in the tenant's folder. A log of all hearing officer decisions must also be maintained by the MHA and made available for inspection by a prospective complainant, his/her representative, or the hearing officer [24 CFR 966.57(a)].

MHA Policy

In rendering a decision, the hearing officer will consider the following matters:

MHA Notice to the Family: The hearing officer will determine if the reasons for the MHA's decision are factually stated in the notice.

Discovery: The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with MHA policy.

MHA Evidence to Support the MHA Decision: The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the MHA's conclusion.

Validity of Grounds for Termination of Tenancy (when applicable): The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and MHA policies. If the grounds for termination are not specified in the regulations or in compliance with MHA policies, then the decision of the MHA will be overturned.

The hearing officer will issue a written decision to the family and the MHA no later than 10 business days after the hearing. The report will contain the following information:

Hearing information:

Name of the complainant

Date, time and place of the hearing

Name of the hearing officer

Name of the MHA representative(s)

Name of family representative (if any)

Names of witnesses (if any)

Background: A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.

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Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the MHA's decision.

Order: The hearing report will include a statement of whether the MHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the MHA to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct the MHA to restore the family's status.

Procedures for Further Hearing

MHA Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the MHA will take effect and another hearing will not be granted.

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Final Decision [24 CFR 966.57(b)]

The decision of the hearing officer is binding on the MHA which must take the action, or refrain from taking the action cited in the decision unless the MHA Board of Commissioners determines within a reasonable time, and notifies the complainant that:

- The grievance does not concern MHA action or failure to act in accordance with or involving the complainant's lease on MHA policies which adversely affect the complainant's rights, duties, welfare, or status; or
- The decision of the hearing officer is contrary to federal, state, or local law, HUD regulations or requirements of the annual contributions contract between HUD and the MHA

MHA Policy

When the MHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to the MHA Board of Commissioners within 10 business days of the date of the hearing officer's decision. The Board has 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the hearing officer or Board of Commissioners in favor of the MHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights, nor effect in any manner whatever, any rights the complainant may have to a subsequent trial or judicial review in court [24 CFR 966.57(c)].

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EXHIBIT 14-1: SAMPLE GRIEVANCE PROCEDURE

Note: The sample procedure provided below is a sample only and is designed to match up with the default policies in the model ACOP. If your MHA has made policy decisions that do not reflect the default policies in the ACOP, you would need to ensure that the procedure matches those policy decisions.

I. Definitions applicable to the grievance procedure [24 CFR 966.53]

A. Grievance: Any dispute a tenant may have with respect to MHA action or failure to act in accordance with the individual tenant's lease or MHA regulations that adversely affects the individual tenant's rights, duties, welfare, or status.

B. Complainant: Any tenant (as defined below) whose grievance is presented to the MHA or at the project management office in accordance with the requirements presented in this procedure.

C. Elements of due process: An eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:

   i. Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction

   ii. Right of the tenant to be represented by counsel

   iii. Opportunity for the tenant to refute the evidence presented by the MHA, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense that the tenant may have

   iv. A decision on the merits of the case

D. Hearing officer: An impartial person or persons selected by the MHA other than the person who made or approved the decision under review, or a subordinate of that person. Such individuals do not need legal training.

E. Tenant: The adult person (or persons other than a live-in aide) who resides in the unit and who executed the lease with the MHA as lessee of the dwelling unit, or if no such person now resides in the unit, who resides in the unit and who is the remaining head of the household of the tenant family residing in the dwelling unit.

F. Resident organization: An organization of residents, which also may include a resident management corporation.

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II. Applicability of this grievance procedure [24 CFR 966.51]

In accordance with the applicable federal regulations (24 CFR 966.50), this grievance procedure is applicable to all individual grievances (as defined in Section I above) between the tenant and the MHA with the following exception of disputes between tenants not involving the MHA or class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and the MHA's Board of Commissioners [24 CFR 966.51(b)].

This grievance procedure is incorporated by reference in all tenant dwelling leases and will be furnished to each tenant and all resident organizations [24 CFR 966.52 (b) and (d)].

Any changes proposed in this grievance procedure must provide for at least 30 days' notice to tenants and resident organizations, setting forth the proposed changes and providing an opportunity to present written comments. Comments will be considered by the MHA before any revisions are made to the grievance procedure [24 CFR 966.52(c)].

III. Informal settlement of a grievance [24 CFR 966.54]

Any grievance must be personally presented, either orally or in writing, to the MHA's central office or the management office of the development in which the complainant resides **within 10 days after the grievable event.**

Grievances related to complaints about operations matters that are received by the MHA's central office will be referred to the person responsible for the management of the development in which the complainant resides. Grievances involving complaints related to discrimination, harassment, or disability rights will be referred to the Civil Rights Administrator or Director of Operations.

As soon as the grievance is received, it will be reviewed by the management office of the development or the Civil Rights Administrator (if applicable) to be certain that neither of the exclusions in paragraphs II.A or II.B above applies to the grievance. Should one of the exclusions apply, the complainant will be notified in writing that the matter raised is not subject to the MHA's grievance procedure with the reason specified.

If neither of the exclusions cited above apply, the complainant will be contacted to arrange a mutually convenient time **within 10 business days** to meet so the grievance may be discussed informally and settled without a hearing. At the informal settlement, the complainant will present the grievance and the person in charge of the management office or the Civil Rights Administrator will attempt to settles the grievance to the satisfaction of both parties.

Within five business days following the informal discussion, the MHA will prepare and either hand deliver, mail, or email to the tenant a summary of the discussion that must specify the names of the participants, the dates of meeting, the nature of the proposed disposition of the complaint, and the specific reasons therefore, and will specify the procedures by which a formal hearing under this procedure may be obtained if the complainant is not satisfied. A copy of this summary will also be placed in the tenant's file.

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IV. Formal grievance hearing

If the complainant is not satisfied with the settlement arrived at in the informal settlement, the complainant must submit a written request for a hearing to the management office of the development where the tenant resides **no later than five business days after the summary of the informal hearing is received.**

The written request must specify:

- The reasons for the grievance; and
- The action of relief sought from the MHA

Within 10 days of receiving the written request for a hearing, the hearing officer will schedule and sent written notice of hearing to both the complainant and the MHA.

V. Selecting the hearing officer

A grievance hearing will be conducted by a single impartial person appointed by the MHA as described below:

A. The hearing officer will be appointed directly by the executive director.

B. The hearing officer will be a staff member who did not make or approve the decision under review and who is not a subordinate of such persons. If the designated staff member (such as the program manager) was involved in the decision or is a subordinate of such person, an alternate hearing officer will be selected.

C. The MHA may select designated staff members who were not involved in the decision under review in certain circumstances, such as those involving discrimination claims or denials of requests for reasonable accommodations.

D. The MHA's method for selecting a hearing officer will be inserted into the lease.

VI. Scheduling hearings [24 CFR 966.56(a)]

When a complainant submits a timely request for a grievance hearing, the MHA will immediately appoint an impartial hearing office to schedule the hearing within the following 10 business days.

Once the hearing officer has scheduled the hearing, the hearing officer will send written notice of the hearing to both the complainant and the MHA. Notice to the complainant will be in writing, either personally delivered to the complainant, or sent by mail or email, return receipt requested.

The written notice will specify the time, place, and procedures governing the hearing.

The tenant may request to reschedule a hearing on a one-time basis. Should the complainant need to reschedule a second time, he or she may do so for good cause, or if needed as a reasonable accommodation for a person with disabilities. *Good cause* is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date.

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VII. Procedures governing the hearing [24 CFR 966.56]

The hearing will be held before a hearing officer as described above in Section V. The complainant will be afforded a fair hearing, which will include:

A. The opportunity to examine before the hearing any MHA documents, including records and regulations, that are directly relevant to the hearing.

   The tenant is allowed to copy any such document at the tenant's expense. If the MHA does not make the document available for examination upon request by the complainant, the MHA may not rely on such document at the grievance hearing.

B. The right to be represented by counsel or other person chosen as the tenant's representative and to have such person make statements on the tenant's behalf.

C. The right to a private hearing unless the complainant requests a public hearing.

D. The right to present evidence and arguments in support of the tenant's complaint, to refute evidence relied on by the MHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the MHA or project management relies.

E. A decision based solely and exclusively upon the fact presented at the hearing [24 CFR 966.56(b)].

   The hearing is conducted informally by the hearing officer. The MHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint, and to question any witnesses.

   The complainant or the MHA may arrange in advance for a transcript of the hearing at the expense of the party making the arrangement. Any interested party may purchase a copy of the transcript [24 CFR 966.56(e)].

   The MHA must provide reasonable accommodation for persons with disabilities to participated in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants. If the tenant is visually impaired, any notice to the tenant that is required under this procedure must be in an accessible format [24 CFR 966.56(f)].

   The MHA must comply with HUD's requirements regarding limited English proficiency as specified in "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons," issued January 22, 2007, and available at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep-faq.

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VIII. Failure to appear at the hearing

If the complainant or MHA fails to appear at the hearing, the hearing officer may make a determination to postpone the hearing or make a determination that the complainant has waived his or her right to a hearing.

Both the complainant and the MHA must be notified of the determination by the hearing officer. A determination that the complainant has waived his or her right to a hearing will not constitute a waiver of any right the complainant may have to contest the MHA's disposition of the grievance in an appropriate judicial setting [24 CFR 966.56(c)].

IX. Decision of the hearing officer [24 CFR 966.57]

The hearing officer will prepare a written decision together with the reasons for the decision **within 10 business days** after the hearing. A copy of the decision will be sent to the complainant and the MHA.

The MHA will retain a copy of the decision in the tenant's file.

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 a deadline ordered by the hearing officer, the hearing officer will make a decision based on the evidence presented.

The decision of the hearing officer will be binding on the MHA unless the MHA's Board of Commissioners determines within a reasonable time and notifies the complainant of its determination that:

A. The grievance does not concern MHA action or failure to act in accordance with or involving the complainant's lease or MHA regulations, which adversely affect the complainant's rights, duties, welfare, or status; or

B. The decision of the hearing officer is contrary to applicable federal, state, or local law, HUD regulations, or requirements of the annual contributions contract (ACC) between HUD and the MHA.

When the MHA considers the decision of the hearing officer to be invalid due to either of the reasons stated above, it will present the matter to the MHA Board of Commissioners within 10 business days of the date of the hearing officer's decision. The Board has 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the hearing officer or Board of Commissioners in favor of the MHA or which denies the relief requested by the complainant in whole or in part will not constitute a waiver of nor affect in any way the rights of the complainant to a trial or judicial review in any court proceedings, which may be brought in the matter later [24 CFR 966.57].

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Chapter 15

PROGRAM INTEGRITY

INTRODUCTION

The MHA is committed to ensuring that funds made available to the MHA are spent in accordance with HUD requirements.

This chapter covers HUD and MHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

> Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents MHA policies related to preventing, detecting, and investigating errors and program abuse.
>
> Part II: Corrective Measures and Penalties. This part describes the corrective measures the MHA must and may take when errors or program abuses are found.

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PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

15-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

HUD created the Enterprise Income Verification (EIV) system to provide MHAs with a powerful tool for preventing errors and program abuse. MHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. MHAs are further required to:

- Provide applicants and residents with form HUD-52675, "Debts Owed to MHAs and Terminations"
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

MHA Policy

The MHA anticipates that the vast majority of families and MHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the MHA's program is administered effectively and according to the highest ethical and legal standards, the MHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The MHA will provide each applicant and resident 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.

The MHA will provide each applicant and resident 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 MHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

The MHA will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. The MHA will discuss program compliance and integrity issues. At the conclusion of all program orientation sessions, the family representative will be required to sign a program briefing certificate to confirm that all rules and pertinent regulations were explained to them.

The MHA will routinely provide resident counseling as part of every reexamination interview in order to clarify any confusion pertaining to program rules and requirements.

MHA staff will be required to review and explain the contents of all HUD- and MHA-required forms prior to requesting family member signatures.

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The MHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key MHA forms and form letters that request information from a family member.

The MHA will provide each MHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

At every regular reexamination the MHA staff will explain any changes in HUD regulations or MHA policy that affect residents.

For purposes of this chapter the term *error* refers to an unintentional error or omission. P*rogram 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.

15-I.B. DETECTING ERRORS AND PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, the MHA will use a variety of activities to detect errors and program abuse.

Quality Control and Analysis of Data

MHA Policy

The MHA will employ a variety of methods to detect errors and program abuse, including:

The MHA routinely will use EIV and other non-HUD sources of up-front income verification. This includes the Work Number and any other private or public databases available to the MHA.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

The MHA will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

Notice PIH 2015-16 requires all MHAs that expend $750,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of MHA activities and notifies the MHA of errors and potential cases of program abuse.

MHA Policy

The MHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the MHA's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

MHA Policy

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The MHA will encourage staff, residents, and the public to report possible program abuse.

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15-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

When the MHA Will Investigate

MHA Policy

The MHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the MHA to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The MHA will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

Consent to Release of Information [24 CFR 960.259]

The MHA may investigate possible instances of error or abuse using all available MHA and public records. If necessary, the MHA will require families to sign consent forms for the release of additional information.

Analysis and Findings

MHA Policy

The MHA 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 the MHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the MHA, and (3) what corrective measures or penalties will be assessed.

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Consideration of Remedies

All errors and instances of program abuse must be corrected prospectively. Whether the MHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

MHA Policy

In the case of family-caused errors or program abuse, the MHA 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.

Notice and Appeals

MHA Policy

The MHA 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 MHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through an informal hearing or grievance hearing (see Chapter 14).

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PART II: CORRECTIVE MEASURES AND PENALTIES

15-II.A. UNDER- OR OVERPAYMENT

An under- or overpayment includes an incorrect tenant rent payment by the family, or an incorrect utility reimbursement to a family.

Corrections

Whether the incorrect rental determination is an overpayment or underpayment, the MHA must promptly correct the tenant rent and any utility reimbursement prospectively.

> MHA Policy
>
> Increases in the tenant rent will be implemented on the first of the month following a written 30 day notice.
>
> Any decreases in tenant rent will become effective the first of the month following the discovery of the error.

Reimbursement

Whether the family is required to reimburse the MHA or the MHA is required to reimburse the family depends upon which party is responsible for the incorrect payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

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15-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

General administrative requirements for participating in the program are discussed throughout the ACOP. This section deals specifically with errors and program abuse by family members.

An incorrect rent determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the MHA to use incorrect information provided by a third party.

Family Reimbursement to MHA

MHA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. The MHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the amount owed, the MHA will terminate the family's lease in accordance with the policies in Chapter 13.

MHA Reimbursement to Family

MHA Policy

The MHA will not reimburse the family for any overpayment of rent when the overpayment clearly is caused by the family.

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Prohibited Actions

An applicant or resident in the public housing program must not knowingly:

- Make a false statement to the MHA [Title 18 U.S.C. Section 1001].
- Provide incomplete or false information to the MHA [24 CFR 960.259(a)(4)].
- Commit fraud, or make false statements in connection with an application for assistance or with reexamination of income [24 CFR 966.4(l)(2)(iii)(C)].

MHA Policy

Any of the following will be considered evidence of family program abuse:

Offering bribes or illegal gratuities to the MHA Board of Commissioners, employees, contractors, or other MHA representatives

Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to the MHA 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., misreporting of income or 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 MHA 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 the MHA may, at its discretion, impose any of the following remedies.

- The MHA may require the family to repay any amounts owed to the program (see 15-II.B., Family Reimbursement to MHA).
- The MHA may 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 13 (for residents).
- The MHA may deny admission or terminate the family's lease following the policies set forth in Chapter 3 and Chapter 13 respectively.
- The MHA may refer the family for state or federal criminal prosecution as described in section 15-II.D.

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15-II.C. MHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of MHA staff with respect to normal program administration are discussed throughout the ACOP. This section specifically addresses actions of a MHA staff member that are considered errors or program abuse related to the public housing program. Additional standards of conduct may be provided in the MHA personnel policy.

MHA-caused incorrect rental determinations include (1) failing to correctly apply public housing rules regarding family composition, income, assets, and expenses, and (2) errors in calculation.

Repayment to the MHA

The family is not required to repay an underpayment of rent if the error or program abuse is caused by MHA staff.

MHA Reimbursement to Family

MHA Policy

The MHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error or staff program abuse.

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Prohibited Activities

MHA Policy

Any of the following will be considered evidence of program abuse by MHA staff:

Failing to comply with any public housing program requirements for personal gain

Failing to comply with any public housing program requirements as a result of a conflict of interest relationship with any applicant or resident

Seeking or accepting anything of material value from applicants, residents, vendors, contractors, or other persons who provide services or materials to the MHA

Disclosing confidential or proprietary information to outside parties

Gaining profit as a r15esult of insider knowledge of MHA activities, policies, or practices

Misappropriating or misusing public housing funds

Destroying, concealing, removing, or inappropriately using any records related to the public housing program

Committing any other corrupt or criminal act in connection with any federal housing program

Committing sexual harassment or other harassment based on race, color, religion, national origin, familial status, disability, sexual orientation, or gender identity, either quid pro quo (supervisory harassment) or hostile environment

Allowing sexual harassment or other harassment based on race, color, religion, national origin, familial status, disability, sexual orientation, or gender identity, either quid pro quo (supervisory harassment) or hostile environment, where the MHA knew or should have known such harassment was occurring

Retaliating against any applicant, resident, or staff reporting sexual harassment or other harassment based on race, color, religion, national origin, familial status, disability, sexual orientation, or gender identity, either quid pro quo (supervisory harassment) or hostile environment

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15-II.D. CRIMINAL PROSECUTION

MHA Policy

When the MHA determines that program abuse by a family or MHA staff member has occurred and the amount of underpaid rent meets or exceeds the threshold for prosecution under local or state law, the MHA will refer the matter to the appropriate entity for prosecution. When the amount of underpaid rent 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 public housing program will be referred to the appropriate local, state, or federal entity.

15-II.E. FRAUD AND PROGRAM ABUSE RECOVERIES

MHAs who enter into a repayment agreement with a family to collect rent owed, initiate litigation against the family to recover rent owed, or begin eviction proceedings against a family may retain 100 percent of program funds that the MHA recovers [Notice PIH 2007-27 (HA)].

If the MHA does none of the above, all amounts that constitute an underpayment of rent must be returned to HUD.

The family must be afforded the opportunity for a hearing through the MHA's grievance process.

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Chapter 16

PROGRAM ADMINISTRATION

INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this ACOP. The policies are discussed in seven parts as described below:

Part I: Setting Utility Allowances. This part describes how utility allowances are established and revised. Also discussed are the requirements to establish surcharges for excess consumption of MHA-furnished utilities.

Part II: Establishing Flat Rents . This part describes the requirements and policies related to establishing and updating flat rent amounts.

Part III: Repayment of Family Debts. This part contains policies for recovery of monies that have been underpaid by families, and describes the circumstances under which the MHA will offer repayment agreements to families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part IV: Public Housing Assessment System (MHAS). This part describes the MHAS indicators, how MHAs are scored under MHAS, and how those scores affect a MHA.

Part V: 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 MHA will follow.

Part VI: Reporting and Record Keeping for Children with Elevated Blood Lead Level. This part describes the MHA's reporting responsibilities related to children with elevated blood lead levels that are living in public housing.

Part VII: Violence against Women Act (VAWA): Notification, Documentation, and Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families 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.

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PART I: SETTING UTILITY ALLOWANCES [24 CFR 965 Subpart E]

16-I.A. OVERVIEW

MHAs must establish allowances for MHA-furnished utilities for all check metered utilities and for resident-purchased utilities for all utilities purchased directly by residents from a utility supplier [24 CFR 965.502(a)].

MHAs must also establish surcharges for excess consumption of MHA-furnished utilities [24 CFR 965.506].

The MHA must maintain a record that documents the basis on which utility allowances and scheduled surcharges are established and revised, and the record must be made available for inspection by residents [24 CFR 965.502(b)].

16-I.B. UTILITY ALLOWANCES

The MHA must establish separate allowances for each utility and for each category of dwelling units the MHA determines to be reasonably comparable as to factors affecting utility usage [24 CFR 965.503].

The objective of a MHA in establishing utility allowances for each dwelling unit category and unit size is to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment [24 CFR 965.505].

Utilities include gas, electricity, fuel for heating, water, sewerage, and solid waste disposal for a dwelling unit. In addition, if the MHA does not furnish a range and refrigerator, the family must be granted a utility allowance for the range and refrigerator they provide [24 CFR 965.505].

Costs for telephone, cable/satellite TV, and internet services are not considered utilities [PH Occ GB, p. 138].

Utility allowance amounts will vary by the rates in effect, size and type of unit, climatic location and sitting of the unit, type of construction, energy efficiency of the dwelling unit, and other factors related to the physical condition of the unit. Utility allowance amounts will also vary by residential demographic characteristics affecting home energy usage [PH Occ GB, p. 138].

Chapter 14 of the *PH Occupancy Guidebook* provides detailed guidance to the MHA about establishing utility allowances.

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Air-Conditioning

"If a MHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or check meters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning but cannot be check metered, residents are to be surcharged in accordance with 965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible." [24 CFR 965.505(e)]

MHA Policy

The MHA [has/has not] installed air-conditioning.

Utility Allowance Revisions [24 CFR 965.507]

The MHA must review at least annually the basis on which utility allowances have been established and must revise the allowances if necessary in order to adhere to the standards for establishing utility allowances that are contained in 24 CFR 965.505.

The MHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change, and is required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which the allowance was based.

Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account became effective.

MHA Policy

Between annual reviews of utility allowances, the MHA will only revise its utility allowances due to a rate change, when required to by the regulation.

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16-I.C. SURCHARGES FOR MHA-FURNISHED UTILITIES [24 CFR 965.506]

For dwelling units subject to allowances for MHA-furnished utilities where check meters have been installed, the MHA must establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis or for stated blocks of excess consumption, and must be based on the MHA's average utility rate. The basis for calculating the surcharges must be described in the MHA's schedule of allowances. Changes in the amount of surcharges based directly on changes in the MHA's average utility rate are not subject to the advance notice requirements discussed under 16-I.D.

For dwelling units served by MHA-furnished utilities where check meters have not been installed, the MHA must establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of MHA-furnished equipment. The surcharge schedule must state the resident-owned equipment (or functions of MHA-furnished equipment) for which surcharges will be made and the amounts of such charges. Surcharges must be based on the cost to the MHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

MHA Policy

The MHA [does/does not] have MHA-furnished utilities.

16-I.D. NOTICE REQUIREMENTS [965.502]

The MHA must give notice to all residents of proposed allowances and scheduled surcharges, and revisions thereof. The notice must be given in the manner provided in the lease and must:

- Be provided at least 60 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.
- Describe the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances and schedule of surcharges.
- Notify residents of the place where the MHA's documentation on which allowances and surcharges are based is available for inspection.
- Provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.

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16-I.E. REASONABLE ACCOMMODATION [24 CFR 965.508]

On request from a family that includes a disabled or elderly person, the MHA must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family [PH Occ GB, p. 172].

Likewise, residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172].

See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

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PART II: ESTABLISHING FLAT RENTS

16-II.A. OVERVIEW

Flat rents are designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

Flat rents are also used to prorate assistance for a mixed family. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigrations status [24 CFR 5.504].

This part discusses how the MHA establishes and updates flat rents. Policies related to the use of flat rents, family choice of rent, flat rent hardships, and proration of rent for a mixed family are discussed in Chapter 6.

16-II.B. FLAT RENTS [24 CFR 960.253(b) and Notice PIH 2017-23]

Establishing Flat Rents

The 2015 Appropriations Act requires that flat rents must be set at no less than 80 percent of the applicable fair market rent (FMR). Alternatively, the MHA may set flat rents at no less than 80 percent of the applicable small area FMR(SAFMR) for metropolitan areas, or 80 percent of the applicable unadjusted rents for nonmetropolitan areas.

For areas where HUD has not determined a SAFMR or an unadjusted rent, MHAs must set flat rents at no less than 80 percent of the FMR or apply for an exception flat rent.

The 2015 Appropriations Act permits MHAs to request an exception flat rent that is lower than either 80 percent of the FMR or SAFMR/unadjusted rent if the MHA can demonstrate that these FMRs do not reflect the market value of a particular property or unit.

In order to demonstrate the need for an exception flat rent, MHAs are required to submit a market analysis methodology that demonstrates the value of the unit. The MHA must use HUD's rent reasonableness methodology to determine flat rents. In determining flat rents, MHAs must consider the following:

- Location
- Quality
- Unit size
- Unit type
- Age of the unit
- Amenities at the property and in immediate neighborhood
- Housing services provided
- Maintenance provided by the MHA
- Utilities provided by the MHA and/or landlord for (comparable units in the market study)

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The MHA must provide a corresponding key explaining the calculations used for determining the valuation for each factor. HUD published a Flat Rent Market Analysis tool on August 22, 2018, which includes a rent adjustment guide, a market rent comparison guide, and a rent adjustment worksheet to aide MHAs in requesting exception flat rents.

MHAs must receive written HUD approval before implementing exception flat rents. MHAs with a previously approved flat rent exception request may submit a written request to extend the approved flat rents for up to two additional years, provided local market conditions remain unchanged. Detailed information on how to request exception flat rents can be found in Notice PIH 2017-23.

MHAs are now required to apply a utility allowance to flat rents as necessary. Flat rents set at 80 percent of the FMR must be reduced by the amount of the unit's utility allowance, if any.

Review of Flat Rents

No later than 90 days after the effective date of the new annual FMRs/SAFMRs/unadjusted rent, MHAs must implement new flat rents as necessary based changes to the FMR/SAFMR/unadjusted rent or request an exception.

If the FMR falls from year to year, the MHA may, but is not required to, lower the flat rent to 80 percent of the current FMR/SAFMR/unadjusted rent.

MHA Policy

If the FMR/SAFMR/unadjusted rent is lower than the previous year, the MHA will reduce flat rents to 80 percent of the current FMR/SAFMR.

Posting of Flat Rents

MHA Policy

The MHA will publicly post the schedule of flat rents in a conspicuous manner in the applicable MHA or project office.

Documentation of Flat Rents [24 CFR 960.253(b)(5)]

The MHA must maintain records that document the method used to determine flat rents, and that show how flat rents were determined by the MHA in accordance with this method.

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PART III: FAMILY DEBTS TO THE MHA

16-III.A. OVERVIEW

This part describes the MHA's policies for recovery of monies owed to the MHA by families.

MHA Policy

When an action or inaction of a resident family results in the underpayment of rent or other amounts, the MHA holds the family liable to return any underpayments to the MHA.

The MHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When a family refuses to repay monies owed to the MHA, the MHA will 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

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16-III.B. REPAYMENT POLICY

Family Debts to the MHA

MHA Policy

Any amount owed to the MHA by a public housing family must be repaid. If the family is unable to repay the debt within 30 days, the MHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the MHA will terminate the family's tenancy in accordance with the policies in Chapter 13. The MHA will also pursue other modes of collection.

General Repayment Agreement Guidelines

Down Payment Requirement

MHA Policy

Before executing a repayment agreement with a family, the MHA will generally require a down payment of 10 percent of the total amount owed. If the family can provide evidence satisfactory to the MHA that a down payment of 10 percent would impose an undue hardship, the MHA may, in its sole discretion, require a lesser percentage or waive the requirement.

Payment Thresholds

Notice PIH 2017-12 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, which is considered "affordable." Moreover, Notice PIH 2017-12 acknowledges that MHAs have the discretion to establish "thresholds and policies" for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

MHA Policy

If a family is paying less than 40 percent of its monthly adjusted income (MAI) in rent, the minimum monthly payment amount will be the greater of the following two amounts:

The difference between 40 percent of the family's MAI and the TTP at the time the agreement is executed

$25

If a family can provide evidence satisfactory to the MHA that a monthly payment amount of $25 would impose an undue hardship, the MHA may, in its sole discretion, require a lower monthly payment amount.

If the family's income increases or decreases during the term of a repayment agreement, either the MHA or the family may request that the monthly payment amount be adjusted accordingly.

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Execution of the Agreement

MHA Policy

Any repayment agreement between the MHA and a family must be signed and dated by the MHA and by the head of household and spouse/cohead (if applicable).

Due Dates

MHA Policy

All payments are due by the close of business on the 15th day of the month. If the 15th does not fall on a business day, the due date is the close of business on the first business day after the 15th.

Late or Missed Payments

MHA Policy

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 MHA, the MHA 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 MHA will terminate tenancy in accordance with the policies in Chapter 13.

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 MHA will terminate tenancy in accordance with the policies in Chapter 13.

No Offer of Repayment Agreement

MHA Policy

The MHA generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family, or if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

Repayment Agreements Involving Improper Payments

Notice PIH 2017-12 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the public housing lease that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the MHA may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to the MHA the monthly payment amount specified in the agreement but must also pay to the MHA the monthly tenant rent
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of tenancy

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PART IV: PUBLIC HOUSING ASSESSMENT SYSTEM (MHAS)

16-IV.A. OVERVIEW

The purpose of the Public Housing Assessment System (MHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among MHAs, public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations.

16-IV.B. MHAS INDICATORS [24 CFR 902 Subparts A, B, C, D, and E]

The table below lists each of the MHAS indicators, the points possible under each indicator, and a brief description of each indicator. A MHA's performance is based on a combination of all four indicators.

Indicator 1: Physical condition of the MHA's projects **Maximum Score: 40** • The objective of this indicator is to determine the level to which a MHA is maintaining its public housing in accordance with the standard of decent, safe, sanitary, and in good repair. • To determine the physical condition of a MHA's projects, inspections are performed of the following five major areas of each public housing project: site, building exterior, building systems, dwelling units, and common areas. The inspections are performed by an independent inspector arranged by HUD, and include a statistically valid sample of the units in each project in the MHA's public housing portfolio.
Indicator 2: Financial condition of the MHA's projectsMaximum Score: 25 • The objective of this indicator is to measure the financial condition of the MHA's public housing projects for the purpose of evaluating whether the MHA has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary, and in good repair. • A MHA's financial condition is determined by measuring each public housing project's performance in each of the following subindicators: quick ratio, months expendable netassets ratio, and debt service coverage ratio.

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Indicator 3: Management operations of the MHA's projects **Maximum Score: 25** • The objective of this indicator is to measure certain key management operations and responsibilities of a MHA's projects for the purpose of assessing the MHA's management operations capabilities. • Each project's management operations are assessed based on the following sub-indicators: occupancy, tenant accounts receivable, and accounts payable. • An on-site management review may be conducted as a diagnostic and feedback tool for problem performance areas, and for compliance. Management reviews are not scored.
Indicator 4: Capital Fund **Maximum Score: 10** • The objective of this indicator is to measure how long it takes the MHA to obligate capital funds and to occupy units. • The MHA's score for this indicator is measured at the MHA level and is based on the following subindicators: timeliness of fund obligation and occupancy rate.

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16-IV.C. MHAS SCORING [24 CFR 902 Subpart F]

HUD's Real Estate Assessment Center (REAC) issues overall MHAS scores, which are based on the scores of the four MHAS indicators, and the subindicators under each indicator. The MHA's indicator scores are based on a weighted average of the MHA's public housing projects' scores. MHAS scores translate into a designation for each MHA as high performing, standard, substandard, or troubled.

A high performer is a MHA that achieves an overall MHAS score of 90 or greater, and achieves a score of at least 60 percent of the points available under the physical, financial, and management indicators and at least 50 percent of the points available under the capital fund indicator.

A standard performer is a MHA that has an overall MHAS score between 60 and 89, and achieves a score of at least 60 percent of the points available under the physical, financial, and management indicators and at least 50 percent of the points available under the capital fund indicator.

A substandard performer is a MHA that has an overall MHAS score of at least 60 percent and achieves a score of less than 60 percent under one or more of the physical, financial, or management indicators.

A troubled performer is a MHA that achieves an overall MHAS score of less than 60, or achieves less than 50 percent of the total points available under the capital fund indicator.

These designations can affect a MHA in several ways:

- High-performing MHAs are eligible for incentives including relief from specific HUD requirements and bonus points in funding competitions [24 CFR 902.71].
- MHAs that are standard performers may be required to submit and operate under a corrective action plan to eliminate deficiencies in the MHA's performance [24 CFR 902.73(a)(1)].
- MHAs that are substandard performers will be required to submit and operate under a corrective action plan to eliminate deficiencies in the MHA's performance [24 CFR 902.73(a)(2)].
- MHAs with an overall rating of "troubled" are subject to additional HUD oversight, and are required to enter into a memorandum of agreement (MOA) with HUD to improve MHA performance [24 CFR 902.75].
- MHAs that fail to execute or meet MOA requirements may be referred to the Assistant Secretary to determine remedial actions, including, but not limited to, remedies available for substantial default [24 CFR 902.75(g) and 24 CFR Part 907].

MHAs must post a notice of its final MHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and designation [24 CFR 902.64(b)(2)].

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PART V: RECORD KEEPING

16-V.A. OVERVIEW

The MHA 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 MHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights, and that comply with VAWA 2013 confidentiality requirements.

16-V.B. RECORD RETENTION

The MHA 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].

Notice PIH 2014-20 requires the MHA 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 MHA must keep confidential records of all emergency transfer requested under the MHA's Emergency Transfer Plan, and the outcomes of such requests, and retain the records for a period of three years, or for a period of time as specific in program regulations [24 CFR 5.2002(e)(12)].

MHA Policy

The MHA will keep the last three years of the Form HUD-50058 and supporting documentation, and for at least three years after end of participation all documents related to a family's eligibility, tenancy, and termination.

In addition, the MHA will keep the following records for at least three years:

An application from each ineligible family and notice that the applicant is not eligible

Lead-based paint records as required by 24 CFR 35, Subpart B

Documentation supporting the establishment of flat rents

Documentation supporting the establishment of utility allowances and surcharges

Documentation related to MHAS

Accounts and other records supporting MHA budget and financial statements for the program

Complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule

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Confidential records of all emergency transfers related to VAWA requested under the MHA's Emergency Transfer Plan and the outcomes of such requests

Other records as determined by the MHA or as required by HUD

If a hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 14-II.A.

16-V.C. RECORDS MANAGEMENT

MHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

MHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized MHA staff.

MHA 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 MHA may release the information collected.

Upfront Income Verification (UIV) Records

MHAs 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 (UIV) Data*.

MHA Policy

Prior to utilizing HUD's EIV system, the MHA will adopt and implement EIV security procedures required by HUD.

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Criminal Records

The MHA may only disclose the criminal conviction records which the MHA receives from a law enforcement agency to officers or employees of the MHA, or to authorized representatives of the MHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The MHA must establish and implement a system of records management that ensures that any criminal record received by the MHA 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 MHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The MHA must establish and implement a system of records management that ensures that any sex offender registration information received by the MHA 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 MHA 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 MHA other than under 24 CFR 5.905.

Medical/Disability Records

MHAs are not permitted to inquire about the nature or extent of a person's disability. The MHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the MHA receives a verification document that provides such information, the MHA should not place this information in the tenant file. The MHA should destroy the document.

Domestic Violence, Dating Violence, Sexual Assault, or Stalking Records

For requirements and MHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, or stalking, see section 16-VII.E.

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PART VI: REPORTING REQUIREMENTS FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL

16-VI.A. REPORTING REQUIREMENTS [24 CFR 35.1130(e); Notice PIH 2017-13]

The MHA has certain responsibilities relative to children with elevated blood lead levels that are living in public housing.

The MHA must report the name and address of a child identified as having an elevated blood lead level (EBLL) to the public health department within five business days of being so notified by any other medical health care professional. The MHA must also report each known case of a child with an EBLL to the HUD field office.

MHA Policy

The MHA will provide the public health department written notice of the name and address of any child identified as having an elevated blood lead level.

The MHA will provide written notice of each known case of a child with an EBLL to the HUD field office, and to HUD's Office of Lead Hazard Control (OLHCHH), within five business days of receiving the information.

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PART VII: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, AND CONFIDENTIALITY

16-VII.A. OVERVIEW

The Violence against Women Reauthorization 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 public housing program. If your state or local laws provide greater protection for such victims, those apply in conjunction with VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and MHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and MHA policies are located in Chapter 3, "Eligibility" (sections 3-I.C and 3-III.F); Chapter 5, "Occupancy Standards and Unit Offers" (section 5-II.D); Chapter 8, "Leasing and Inspections" (section 8-I.B); Chapter 12, "Transfer Policy" (sections 12-III.C, 12-III.F, and 12-IV.D); and Chapter 13, "Lease Terminations" (sections 13-III.F and 13-IV.D).

16-VII.B. DEFINITIONS [24 CFR 5.2003, FR Notice 8/6/13]

As used in VAWA:

- 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 person stands in the position or place of a parent; or
  - Any individual, tenant or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- 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.

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- The term *sexual assault* means:
  - Any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks the capacity to consent
- The term *stalking* means:
  - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

16-VII.C. NOTIFICATION [24 CFR 5.2005(a)]

Notification to Public

The MHA adopts the following policy to help ensure that all actual and potential beneficiaries of its public housing program are aware of their rights under VAWA.

MHA Policy

The MHA 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 notice of occupancy rights under VAWA to public housing 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 MHA'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 Exhibit 16-1)

Contact information for local victim advocacy groups or service providers

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Notification to Applicants and Tenants [24 CFR 5.2005(a)(1)]

MHAs are required to inform public housing applicants and tenants 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 MHA must distribute a notice of VAWA rights, along with the VAWA self-certification form (HUD-5382) at each of these three junctures.

> MHA Policy
>
> The VAWA information provided to applicants and participants will consist of the notices in Exhibit 16-1 and 16-2.
>
> The MHA will provide all applicants with information about VAWA at the time they request an application for housing assistance. The MHA will also include such information in all notices of denial of assistance (see section 3-III.F).
>
> The MHA will provide all tenants with information about VAWA at the time of admission (see section 8-I.B) and at annual reexamination. The MHA will also include such information in all lease termination notices (see section 13-IV.D).

The MHA is not limited to providing VAWA information at the times specified in the above policy. If the MHA decides to provide VAWA information to a tenant following an incident of domestic violence, Notice PIH 2006-42 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases the MHA make alternative delivery arrangements that will not put the victim at risk.

> MHA Policy
>
> Whenever the MHA has reason to suspect that providing information about VAWA to a public housing tenant 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 MHA may decide not to send mail regarding VAWA protections to the victim's unit if the MHA believes the perpetrator may have access to the victim's mail, unless requested by the victim.
>
> When discussing VAWA with the victim, the MHA 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.

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16-VII.D. DOCUMENTATION [24 CFR 5.2007]

A MHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, or 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 MHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the MHA'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 MHA 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 2005 final rule].

MHA Policy

Any request for documentation of domestic violence, dating violence, sexual assault, or stalking will be in writing, will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

The MHA may, in its discretion, extend the deadline for 10 business days. In determining whether to extend the deadline, the MHA 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 MHA will be in writing.

Once the victim provides documentation, the MHA will acknowledge receipt of the documentation within 10 business days.

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Conflicting Documentation [24 CFR 5.2007(e)]

In cases where the MHA 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 MHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The MHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to the MHA. The MHA must honor any court orders issued to protect the victim or to address the distribution of property. Individuals have 30 calendar days to return third-party verification to the MHA. If the MHA does not receive third-party documentation, and the MHA will deny or terminate assistance as a result, the MHA must hold separate hearings for the tenants [Notice PIH 2017-08].

MHA Policy

If presented with conflicting certification documents from members of the same household, the MHA 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 MHA 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 MHA does not receive third-party documentation within the required timeframe (and any extensions) the MHA 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 MHA will hold separate hearings for the applicants or tenants.

Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]

The MHA 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.

MHA Policy

If the MHA accepts an individual's statement or other corroborating evidence (as determined by the victim) of domestic violence, dating violence, sexual assault, or stalking, the MHA 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 MHA 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 MHA may allow, the MHA may deny relief for protection under VAWA.

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16-VII.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]

All information provided to the MHA regarding domestic violence, dating violence, sexual assault, or stalking, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, must be retained in confidence. This means that the MHA (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.

MHA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the MHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

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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[1]

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.[2] The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that public housing 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 public housing, 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 public housing, 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 public housing 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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[1] Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

[2] 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.

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Removing the Abuser or Perpetrator from the Household

The MHA 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 MHA chooses to remove the abuser or perpetrator, the MHA 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 MHA must allow the tenant who is or has been a victim and other household members to remain in the unit for 30 days, 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 MHA must follow Federal, State, and local eviction procedures. In order to divide a lease, the MHA 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 MHA 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 MHA 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 MHA 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 MHA 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 MHA 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.

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The MHA 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 MHA's emergency transfer plan provides further information on emergency transfers, and the MHA 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 MHA 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 MHA must be in writing, and the MHA 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 MHA 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 MHA as documentation. It is your choice which of the following to submit if HP 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 MHA with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, "professional") from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that the MHA has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, the MHA does not have to provide you with the protections contained in this notice.

If the MHA 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 MHA 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 MHA does not have to provide you with the protections contained in this notice.

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Confidentiality

The MHA 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 MHA must not allow any individual administering assistance or other services on behalf of the MHA (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 MHA must not enter your information into any shared database or disclose your information to any other entity or individual. The MHA, however, may disclose the information provided if:

- You give written permission to the MHA to release the information on a time limited basis.
- The MHA 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 MHA to release the information.

VAWA does not limit the MHA'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 MHA 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 MHA 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 MHA can demonstrate the above, the MHA should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

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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 your MHA for 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 MHA 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]**

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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.

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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):

_____

_____

_____

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.

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EXHIBIT 16-3: EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

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

Public Housing Program

Emergency Transfers

The MHA 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),[3] the MHA 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. [4] The ability of the MHA 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 MHA 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.

---

[3]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.

[4]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.

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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 MHA's management office and submit a written request for a transfer to **any MHA office**. The MHA 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 MHA'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 MHA 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 MHA 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 MHA'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 MHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. The MHA 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 MHA 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 MHA has no safe and available units for which a tenant who needs an emergency transfer is eligible, the MHA 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 MHA 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.

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Emergency Transfers: Public Housing (PH) Program

If you are a public housing resident and request an emergency transfer as described in this plan, the MHA will attempt to assist you in moving to a safe unit quickly. The MHA will make exceptions as required to policies restricting moves.

Emergency transfers for which you are not required to apply for assistance include the following:

- Public housing unit in a different development
- Public housing unit in the same development, if you determine that the unit is safe

At your request, the MHA will refer you to organizations that may be able to further assist you.

You may also request an emergency transfer to the following programs for which you are required to apply for assistance:

- HCV tenant-based program
- HCV project-based assistance
- Other programs administered by the MHA (such as state housing programs)

Emergency transfers will not take priority over waiting list admissions for these types of assistance. At your request, the MHA 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.

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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.

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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: _____

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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) _____

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Chapter 17

Banning Policies and Procedures

17-I.A. Duties and Responsibilities

At the discretion of the Director of Asset Management, property management shall have the primary responsibility for the implementation, administration and enforcement of the Banning Regulation as it pertains to their respective assigned housing development. Property Supervisors shall be responsible for notifying residents of persons banned from MHA property.

Security personnel (Richardson Terrace) contracted to provide services shall participate in the endorsement of the Banning Regulation. Such enforcement may include properly identifying trespassers, issuing citations and notifying the respective Property Supervisor of such violation.

Managers shall upon approval by the Director of Asset Management and at the discretion of the property management, be responsible for identifying Banning Violators, documenting violations by both residents and non-residents, and notifying the appropriate Property Supervisor of such violations.

17-I.B. Banning Regulations

A non-resident, including but not limited to, a guest or visitor of a resident, may be banned if they commit any of the following acts in or upon any area of a MHA development.

> Any misdemeanor or infraction that disturbs the peaceful enjoyment6 of the development, including, without limitation, illegal drug activity or violent criminal activity;
>
> Destruction of either MHA property or private property;
>
> After warning; continuing to interfere with the job responsibilities of a MHA employee or vendor; and/or
>
> After warning, continual reports of disturbing other residents' peaceful enjoyment of the complex.
>
> ***A former resident that was evicted under a lease-violation eviction will be automatically banned.***
>
> ***A current resident may be banned from other MHA sites.***

The non-resident may be banned immediately if they commit one misdemeanor of infraction involving possession of a controlled substance or one felony under state or federal law in or upon any area of the MHA development including without limitation, illegal or violent criminal activity.

The MHA development includes, but is not limited to, a private road or curb area, sidewalk, parking lot, alley, park grounds, playground, basketball court, hallway, stairway, laundry or recreational room, community center, or other common area grounds, place, building, or vacant lot on MHA property.

If a non-resident violates paragraph 1 above, ***the resident(s) they visit*** can be served with a banning notice excluding the non-resident from the MHA development. A form documenting the incidents leading to the service of the banning notice shall also be completed.

Residents known to associate with the banned non-resident shall receive notice of the person banned from MHA property in the form of a letter from the MHA. The letter will also state that pursuant to the resident's Dwelling Lease Agreement, the resident or member of the resident's household, shall not allow the person who has been excluded to be a guest of the resident in MHA development.

A list of banned non-residents will be distributed to MHA management staff, security personnel and law enforcement, as appropriate. The list of banned non-residents will be located in the management office for resident consumption. The list will include who is banned and exclude the reason for the ban.

It is the responsibility of the lease holder and their household to refer to the posted ban list.

If a banned non-resident comes on a MHA development, they may be cited for trespass.

If the banned non-resident comes on MHA property with a resident who has received notice of the person's banned status, the resident will receive a lease violation. If the resident has not received notice, the resident will be provided notice and warned about future activities with the banned non-resident.

17-II.A. Breach of the Lease

One violation of the Banning Regulation by any household member of a unit shall constitute a breach of the Dwelling Lease Agreement. Violation of the banning Regulation by any household member shall constitute a material breach of the Dwelling Lease Agreement and shall be sufficient grounds for termination of the Dwelling Lease Agreement.

17-II.B. Notices and Recommendations

Once a non-resident is identified as a nuisance to the property by MHA staff *or* a resident has requested a ban, the following will occur:

- A Ban Request form will be filled out and signed by the ban requestor
- An Action Report will by written by MHA staff

- The banned persons name, aliases and date of birth will be documented
- MHA staff will process the ban request to Housing Management for approval
- Once approved, the banned persons information will be placed on the Ban List
- The Ban List will be made available to staff via computer, posted for resident reference and updates will be given to law enforcement agencies
- The ban is considered permanent until overturned by Property Manager or Administrative Hearing
- A banned non-resident may not be offered a MHA unit if they are on the MHA wait list

Once a resident is notified in writing of a non-resident being banned from MHA property, the resident is deemed to have been put on notice that pursuant to their Dwelling Lease Agreement they are prohibited from allowing a person who has been banned from MH property to be a guest of the resident at the MHA housing development. If a resident is observed associating with a banned non-resident on the housing development, they will be cited for a lease violation.

First Violation: Written notice shall be served on the head of household by the MAH advising of the lease violation. The notice shall constitute a WARNING to the head of household that subsequent violations may result in termination of the Dwelling Lease Agreement.

Second Violation: A lease violation eviction to quit will be served on the head of household.

17.II.C. Remedies

Review of the Resident File

1. Recommendation for Referral: Property Management may offer a referral to counseling, if available, to a family in lieu of an eviction notice.
2. 14-day Notice to Quit: If the head of household and/or members of household should fail to complete counseling sessions, property management shall serve a 14-day notice to Quit based on the violations, and if appropriate, other violations of the lease.

17-II.D. Enforcement

Security Personnel and Law Enforcement

Security personnel and law enforcement personnel shall participate in the enforcement of the Banning Regulation. Such enforcement shall include:

1. Violation Recognition: Should security/law enforcement officers observe a non-resident banned from the housing development in or about the MHA complex, said officers shall

have the authority to make inquiry to the individual(s) as to their identity, whether they are guest(s) of a resident and their reason(s) for being on the property. The purpose of this inquiry is to determine whether a resident is subject to a lease violation, or a non-resident is subject to a trespass citation.

2. Citing Violations: Upon determining that an individual or individuals is in violation of the Banning Regulation, the law enforcement officer may so inform the resident and/or non-resident of the violation. The officer may then issue a written citation. One copy of the citation shall be filed with the Property Supervisor for the development and the law enforcement officer shall maintain a copy.

17-II.E. Enforcement by Management

Property Management shall have the authority to serve warnings, breach of lease notification and/or 14-day notice of eviction for violations of the Banning Regulation.

17-II.F. Grievance Procedure

After submitting ban requests or terminations of a ban to the property manager, MHA residents shall have the right to file a grievance in response to actions taken by the MHA concerning issuance of a Banning Notice or violations of the Banning Regulation. The non-resident cannot avail themselves to the grievance process.

The MHA Grievance Procedure is subject to the Code of Federal Regulation, Title 24, Part 966 revised as of April 1, 1985 and is further amended. Resident shall follow the grievance procedures as set forth in the MHA ACOP.

GLOSSARY

A. ACRONYMS USED IN PUBLIC HOUSING

ACC	Annual contributions contract
ACOP	Admissions and continued occupancy policy
ADA	Americans with Disabilities Act of 1990
AIDS	Acquired immune deficiency syndrome
AMI	Area median income
AMP	Asset management project
BR	Bedroom
CDBG	Community Development Block Grant (Program)
CFP	Capital fund program
CFR	Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as "the regulations")
COCC	Central office cost center
CPI	Consumer price index (published monthly by the Department of Labor as an inflation indicator)
EID	Earned income disallowance
EIV	Enterprise Income Verification
FDIC	Federal Deposit Insurance Corporation
FHA	Federal Housing Administration (HUD Office of Housing)
FHEO	Fair Housing and Equal Opportunity (HUD Office of)
FICA	Federal Insurance Contributions Act (established Social Security taxes)
FMR	Fair market rent
FR	Federal Register
FSS	Family Self-Sufficiency (Program)
FY	Fiscal year
FYE	Fiscal year end
GAO	Government Accountability Office

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HA	Housing authority or housing agency
HCV	Housing choice voucher
HERA	Housing and Economic Recovery Act of 2008
HOPE VI	Revitalization of Severely Distressed Public Housing Program
HUD	Department of Housing and Urban Development
HUDCLIPS	HUD Client Information and Policy System
IMS	Inventory Management System
IPA	Independent public accountant
IRA	Individual retirement account
IRS	Internal Revenue Service
JTPA	Job Training Partnership Act
LBP	Lead-based paint
LEP	Limited English proficiency
LIHTC	Low-income housing tax credit
MTW	Moving to Work
NOFA	Notice of funding availability
OGC	HUD's Office of General Counsel
OIG	HUD's Office of Inspector General
OMB	Office of Management and Budget
PASS	Plan to Achieve Self-Support
PHA	Public housing agency
PHAS	Public Housing Assessment System
PIC	PIH Information Center
PIH	(HUD Office of) Public and Indian Housing
QC	Quality control
QHWRA	Quality Housing and Work Responsibility Act of 1998 (also known as the Public Housing Reform Act)

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RAD	Rental Assistance Demonstration Program
REAC	(HUD) Real Estate Assessment Center
RFP	Request for proposals
RIGI	Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)
ROSS	Resident Opportunity and Supportive Services
SSA	Social Security Administration
SSI	Supplemental security income
SWICA	State wage information collection agency
TANF	Temporary assistance for needy families
TR	Tenant rent
TTP	Total tenant payment
UA	Utility allowance
UFAS	Uniform Federal Accessibility Standards
UIV	Upfront income verification
UPCS	Uniform Physical Condition Standards
URP	Utility reimbursement payment
VAWA	Violence Against Women Reauthorization Act of 2013
VCA	Voluntary Compliance Agreement

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B. GLOSSARY OF PUBLIC HOUSING TERMS

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.

Affiliated individual. With respect to an individual, a spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in loco parentis (in the position or place of a parent), or any individual, tenant, or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.

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.

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.

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.

Ceiling rent. The highest rent amount the PHA will require a family to pay, for a particular unit size, when the family is paying an income-based rent.

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 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.

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.

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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.

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.

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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).

Effective date. The "effective date" of an examination or reexamination refers to: (i) in the case of an examination for admission, the date of initial occupancy and (ii) in the case of reexamination of an existing tenant, the date the redetermined rent becomes effective.

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 (Family). A family that is income eligible and meets the other requirements of the 1937 Act and Part 5 of 24 CFR.

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 as determined by HUD, whichever number is higher, 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.

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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 self-sufficiency program (FSS program). The program established by a PHA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).

Federal agency. A department of the executive branch of the federal government.

Flat rent. Established by the PHA for each public housing unit; a rent based on the market rent charged for comparable units in the unassisted rental market, set at no less than 80 percent of the applicable Fair Market Rent (FMR), and adjusted by the amount of the utility allowance, if any

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)

Gender identity. Actual or perceived gender-related characteristics.

Handicap. Any condition or characteristic that renders a person an individual with handicaps. (See *person with disabilities*.)

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 agency (HA). See *public housing agency.*

HUD. The U.S. Department of Housing and Urban Development.

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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-based rent. A tenant rent that is based on the family's income and the PHA's rent policies for determination of such rents.

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.*

Jurisdiction. The area in which the PHA has authority under state and local law to administer the program.

Lease. A written agreement between the PHA and a tenant family for the leasing a public housing unit. The lease establishes the legal relationship between the PHA and the tenant family.

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.

Local preference. A preference used by the PHA to select among applicant families.

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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.

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.

Minimum rent. An amount established by the PHA of zero to $50.

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.

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.

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PHA Plan. The annual plan and the 5-year plan as adopted by the PHA and approved by HUD.

Participant (participant family). A family that has been admitted to the PHA program and is currently assisted in the program.

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.

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 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.

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. A family residing in public housing:

- Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;
- Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or
- Whose annual income increases, as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the PHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance, provided that the total amount over a six-month period is at least $500.

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.

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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).

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 program, the PHA administering the program under an ACC with HUD. ***Secretary.*** The Secretary of Housing and Urban Development.

Section 8. Section 8 of the United States Housing Act of 1937; refers to the housing choice voucher program.

Security deposit. A dollar amount (maximum set according to the regulations) which can be used for unpaid rent or damages to the PHA upon termination of the lease.

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.

Single person. A person living alone or intending to live alone.

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.

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.

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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.

Tenant. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

Tenant rent. The amount payable monthly by the family as rent to the PHA.

Total tenant payment (TTP). The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

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 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. The amount, if any, by which the utility allowance for the unit, if applicable, exceeds the total tenant payment (TTP) for the family occupying the unit.

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, denying assistance under, or evicting from a public housing unit an otherwise qualified applicant or tenant on the basis that the applicant or tenant 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.

Waiting list. A list of families organized according to HUD regulations and PHA policy who are waiting for a unit to become available.

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 (984.103(b)), *welfare assistance* includes only cash maintenance payments from federal or state programs designed to meet a family's ongoing basic needs, but does not include food stamps, emergency rental and utilities assistance, SSI, SSDI, or social security.

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